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THE

CIVIL CODE

OF

LOWER CANADA

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THE

CIVIL CODE

OF

LOWER CANADA

AND THE

BILLS OF EXCHANGE ACT, 1906

WITH ALL STATUTORY AMENDMENTS VERIFIED,
COLLATED AND INDEXED

BY

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PREFACE

MY object in presenting this edition of the Civil Code of Lower Canada is to provide one comprising all the amendments up to date and as nearly a correct copy of the official version as it was possible for me to do so, so that the members of the Bar might have an exact copy of the Civil Code as it is now in force.

Unfortunately as the greatest part of this Code had been finally printed prior to the opening of the last session of the Quebec Legislature, and as the Revised Statutes of Quebec, 1909, now in force, had not then been sanctioned nor published and the amendments to the Civil Code, if such there are, made at the last session not yet to hand, it was impossible for me to incorporate the former whenever necessary in the body of the text or even to refer to the latter.

To meet the case in so far as the Revised Statutes of the Province of Quebec of 1909, are concerned, I have caused to be inserted at the end of the Code an "Errata and Corrigenda", which I trust will be useful. In the Errata I have also inserted some corrections and additions, (errors and omissions have crept in in spite of my best efforts), which I hope will carry out my purpose of making this edition accurate and complete.

In conformity with the official version of the Code, I have used brackets to indicate the articles which the Codification Commissioners considered new law.

Whenever any article of the Code Napoleon is similar to an article in this Code, the article of the former is referred to at the end of the article of the latter by the letter N and number.

Whenever any article of the Code of Civil Procedure or any other article of this Code has any bearing upon any given article, they are referred to respectively by the letter P or C, and their number.

I wish to acknowledge that I derived in my work much help from Mr. Justice Mathieu's Code and I would ask of my brother members of the profession for my efforts, their kind indulgence.

WM. H. BUTLER, L.L.M.

Montreal, July 6th, 1910.

CIVIL CODE

OF

LOWER CANADA

PRELIMINARY TITLE

OF THE PROMULGATION, DISTRIBUTION, EFFECT, APPLICATION, INTERPRETATION AND EXECUTION OF THE LAWS IN GENERAL.

1. Acts of the imperial parliament which affect Canada are deemed to be promulgated and come into force from the day on which they receive the royal assent, unless some other time is therein appointed.—N. 1.

2. The acts of the Legislature are deemed to be promulgated:

1. If they be assented to by the Lieutenant-Governor, from the date of such assent:

2. If they be reserved, from the time at which the Lieutenant-Governor makes known, either by proclamation or by speech or message to the Legislative Council and Assembly, that they have received the assent of the Governor-General in Council.

If, however, they have not been reserved and unless another time has been fixed, they come into force only on the sixtieth day after they have been sanctioned; and if they have been reserved and afterwards assented to, then on the tenth day after their publication in the Quebec Official Gazette (R. S. Q. 5770).

3. Any provincial act assented to by the Lieutenant-Governor ceases to have force and effect from the time at which it is announced, either by proclamation or by speech or message to the Legislative Council and Assembly, that such act has been disallowed, within the year following the reception by the Governor-General of the authen-

tic copy which has been transmitted to him of such act.—(Id. 5771).

4. An authentic copy, in French and English, of the statutes assented to by the Lieutenant-Governor, or the assent to which has been published as required by article 2, if a reserved act, is furnished by the Clerk of the Legislature to the Queen's printer, whose duty it is to print the number of copies indicated to him by the Lieutenant-Governor in Council and distribute them to those persons designated by orders in council and to the members of the Legislative Council and Legislative Assembly according to the joint resolution of the two Houses. (Id. 5772).

5. The persons entitled to such distribution are: the members of both Houses of the Legislature, and the public departments, administrative bodies, judges, public officers and other persons, mentioned in the orders in council of the Lieutenant-Governor.—*Id.* 5773.

6. The laws of Lower Canada govern the immoveable property situated within its limits.

Moveable property is governed by the law of the domicile of its owner. But the law of Lower Canada is applied whenever the question involved relates to the distinction or nature of the property, to privileges and rights of lien, contestations as to possession, the jurisdiction of the courts and procedure, to the mode of execution and attachment, to public policy and the rights of the crown, and also in any other cases specially provided for by this code.

The laws of Lower Canada relative to persons, apply to all persons being therein, even to those not domiciled there; subject, as to the latter, to the exception mentioned at the end of the present article.

An inhabitant of Lower Canada, so long as he retains his domicile therein, is governed, even when absent, by its laws respecting the status and capacity of persons; but these laws do not apply to persons domiciled out of Lower Canada, who, as to their status and capacity, remain subject to the laws of their country. — N. 3. — C. 79 et s., 2189, 2190, 2191. — P. 79, 80, 212.

7. Acts and deeds made and passed out of Lower Canada are valid, if made according to the forms required by the law of the country where they were passed or made. — C. 135, 776.

8. Deeds are construed according to the laws of the country where they were passed, unless there is some law to the contrary, or the parties have agreed otherwise, or by the nature of the deed or from other circum-

stances, it appears that the intention of the parties was to be governed by the law of another place; in any of which cases, effect is given to such law, or such intention expressed or presumed. — C. 1016.

9. No act of the legislature affects the rights or prerogatives of the crown, unless they are included therein by special enactment.

The rights of third parties, who are not specially mentioned in any such act, are likewise exempt from the effect thereof, unless the act is public and general.

10. Every act is public unless declared to be private.

All persons are bound to take cognizance of public acts; but private acts must be pleaded. — R. S. Q. 5774.

11. A judge cannot refuse to adjudicate under pretext of the silence, obscurity or insufficiency of the law. — N. 4.

12. When a law is doubtful or ambiguous, it is to be interpreted so as to fulfil the intention of the legislature, and to attain the object for which it was passed.

The preamble which forms part of the act, assists in explaining it. — C. 2615. — P. 2, 4.

13. No one can by private agreement, validly contravene the laws of public order and good morals. — N. 6. — C. 545, 760, 872, 989, 990, 1062, 1080, 1258.

14. Prohibitive laws import nullity, although such nullity be not therein expressed.

15. The word "shall" is to be construed as imperative, and the word "may" as permissive.

16. Penalties, confiscations and fines incurred for contraventions of the laws, are recoverable, unless it is otherwise specially provided, by ordinary process of law, in the name of Her Majesty, alone, or jointly with another prosecutor, before any court having civil jurisdiction to the amount sought to be recovered, except only the Commissioners' Courts for the summary trial of small causes, which are prohibited from taking cognizance of these cases. — P. 60, 89, 180.

17. The words, terms, expressions and enactments, enumerated in the following schedule, whenever used in this Code or in any act of the Provincial Legislature, have the meaning and application respectively assigned to them in such schedule, and are interpreted in the manner therein specified, unless there is some special enactment to the contrary.

SCHEDULE.

1. Each of the expressions "Her Majesty," "the King," "the Sovereign," "the Queen," "the Crown," means the King or the Queen, his or her heirs and succes-

sors, Sovereigns of the United Kingdom of Great Britain and Ireland.

2. The words "Imperial Parliament" mean the Parliament of the United Kingdom of Great Britain and Ireland; the words "Federal Parliament" mean the Parliament of the Dominion of Canada; the word "Legislature" means the Legislature of Quebec; the words "Imperial acts or statutes" mean the laws passed by the Imperial Parliament; the words "Federal acts or statutes" mean the laws passed by the Parliament of Canada; the words "act," "statute" or "law" used without qualification mean the acts, statutes and laws of the Legislature of Quebec; the word "Province," when used alone, means the Province of Quebec, and the qualification "provincial," added to the words "act," "statute" or "law," means the acts, statutes or laws of the Province.

3. The words "Governor General" mean the Governor General of Canada or the person administering the Government of Canada; and "Lieutenant-Governor" the Lieutenant-Governor of the Porvince of Quebec, or the person administering the Government of the Province.

4. The words "Governor-General in Council" mean the Governor-General or person administering the Government acting with the advice of the Queen's Privy Council for Canada; and "Lieutenant-Governor in Council" the Lieutenant-Governor or person administering the Government acting with the advice of the Executive Council of the Province of Quebec.

5. The word "proclamation" means proclamation under the Great Seal, and the words "Great Seal," mean the Great Seal of the Province of Quebec.

6. The words "Canada," "Dominion," mean the Dominion of Canada; the words "Lower Canada," mean all that part of Canada which formerly constituted the Province of Lower Canada, and mean now the Province of Quebec; and the words "Upper Canada" mean that part of Canada which formerly constituted the Province of Upper Canada, and mean now the Province of Ontario.

7. The words "United Kingdom" mean the United Kingdom of Great Britain and Ireland, and the "United States" the United States of America.

8. The name commonly given to a country, place, body, corporation, society, officer, functionary, person, party or thing, designates and means the country, place, body, corporation, society, officer, functionary, person, party or thing thus

named, without the necessity of more ample description.

9. The masculine gender includes both sexes, unless it appears by the context that it is only applicable to one of them.

10. The singular number extends to more than one person, or more than one thing of the same sort, whenever the context admits of such extension.

11. The word "person" includes bodies politic and corporate, and extends to heirs and legal representatives, unless such meaning is contrary to law or inconsistent with the particular circumstances of the case.

12. The words "writing," "manuscript" and terms of like import, include words printed, painted, engraved, lithographed or otherwise traced or copied.

13. The word "month" means a calendar month.

14. By "holidays" are understood the following days:

1. Sundays;

2. New Year's Day;

3. The festivals of the Epiphany, Ash Wednesday, Good Friday, Easter Monday, the Ascension, All Saints Day, Conception and Christmas Day. — 56 V., c. 38, s. 1.

4. The anniversary of the birthday of the Sovereign, or the day fixed by proclamation for its celebration.

5. The first day of July (the anniversary of the day on which the British North America Act, 1867, came into force), or the second day of July, if the first be a Sunday, and

6. Any other day fixed by Royal proclamation or by proclamation of the Governor-General or of the Lieutenant-Governor, as a public holiday or a day of general fast or thanksgiving, or as Labour Day. — 2 Ed. VII, ch. 120.

15. The word "oath" includes the solemn affirmation which certain persons are permitted to make instead of an oath. — R. S. Q. 5497 and 5498 concerning affirmation of Quakers.

16. The word "magistrate," means a justice of the peace.

"Two justices of the peace" mean two or more justices sitting or acting together.

When anything is ordered to be done by or before a justice of the peace, magistrate, functionary or public officer, one is understood whose powers or jurisdiction extend to the place where such thing ought to be done.

The authority given to do a thing carries with it all the powers necessary for that purpose.

17. The right of nominating to an office or employment carries with it that of removal.

18. The duties imposed and the powers conferred upon an

officer or public functionary, in his official capacity, pass to his successor, and pertain to his deputy, in so far as they are compatible with the charge of the latter.

19. When an act is to be performed by more than two persons, it may be validly done by the majority of them, except in the cases otherwise specially provided.

20. The pound sterling is equivalent to the sum of four dollars eighty-six cents and two-thirds or one pound four shillings and four pence currency. The "sovereign" is of like value.

21. The words "inhabitant of Lower Canada," or "inhabitant of the Province of Quebec" mean a person having his domicile in the Province of Quebec.

22. The terms "acts of civil status" mean the entries made in the registers kept according to law, to establish births, marriages and burials.

"Registers of civil status" are the books so kept and in which such acts are entered.

"Officers of civil status" are those entrusted with the keeping of such registers.

23. By "bankruptcy" is meant the condition of a trader who has discontinued his payments.

24. A "fortuitous event" is one which is unforeseen, and caused by superior force which it was impossible to resist. — R. S. Q., 5775. — P. 5, 7, 321.

BOOK FIRST

OF PERSONS.

TITLE FIRST.

OF THE ENJOYMENT AND LOSS OF CIVIL RIGHTS.

CHAPTER FIRST.

OF THE ENJOYMENT OF CIVIL RIGHTS.

18. Every British subject is, as regards the enjoyment of civil rights in Lower Canada, on the same footing as those born therein, saving the special rules relating to domicile. — N. 8. — *Capit. Que.* 1759. — *Treaty of St. Germain,* 1763.

19. The quality of British subject is acquired either by right of birth, or by operation of law. — N. 7.

20. A person born in any part of the British empire, even of an alien, is a British subject by right of birth, as also is he whose father or grandfather by the father's side is a British subject, although he be himself born in a foreign country; saving the exceptions resulting from special laws of the empire.— N. 10.

21. An alien becomes a British subject by operation of law, by conforming to the conditions the law prescribes. — N. 9.

22. These conditions, in so far as they are prescribed by the laws of the Dominion, are :

1. Residence in Canada during three years at least, or service during at least three years under the Government of Canada, or under the Government of one of the Provinces of Canada, with the intention when naturalized to either reside in Canada or to serve under the Government of the Dominion or under the Government of

one of the Provinces of Canada ;

2. Taking the oath of residence or of service and that of allegiance required by law ;

3. Procuring from the proper court, with the necessary formalities, the certificate of naturalization required by law. — R. S. Q. 6228. — R. S. C., c. 113.

23. An alien woman is naturalized by the mere fact of the marriage she contracts with a British subject. — N. 12.

24. Naturalization confers in Lower Canada, on him by whom it is obtained, all the rights and privileges he would have if born a British subject. — N. 13.

25. Aliens have a right to acquire and transmit by gratuitous or onerous title, as well as by succession or by will, all moveable and immoveable property in Lower Canada, in the same manner as British-born or naturalized subjects. — N. 11. — C. 609.

26. Aliens cannot serve as jurors. — R. S. Q. 5776, 6229. — R. S. C., c. 174.

27. Aliens, although not resident in Lower Canada, may be sued in its courts for the fulfilment of obligations contracted by them even in foreign countries. — N. 14.

28. Any inhabitant of Lower Canada may be sued in its courts for the fulfilment of obligations contracted by him in foreign countries, even in favor of a foreigner. — N. 15.

29. Repealed by 60 V., c. 50, s. 2. — Vide P. 179.

CHAPTER SECOND.

OF THE LOSS OF CIVIL RIGHTS.

30. Civil rights are lost:

1. In the cases which are provided for by the laws of the British Empire.

2. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

SECTION I.

OF CIVIL DEATH.

31. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

32. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

33. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

34. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

SECTION II.

OF THE EFFECTS OF CIVIL DEATH.

35. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

36. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

37. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.

38. Repealed by 6 Ed. VII, c. 38, ss. 1 and 2.[1]

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[1] The effects of civil death cease, for the future, with respect to persons now affected thereby, saving the acquired rights of third parties.

With respect to persons who are now civilly dead in consequence of a condemnation, their condemnation is governed by the preceeding provisions. — 6 Ed. VII, c. 38. — 6 Ed. VII, c. 38, s. 8.

TITLE SECOND.

OF ACTS OF CIVIL STATUS.

CHAPTER FIRST.

GENERAL PROVISIONS.

39. In acts of civil status nothing is to be inserted, either by note or recital, but what it is the duty of the parties to declare. — N. 35.

40. In cases where the parties are not obliged to appear in person at the making of an act of civil status, they may be represented by an attorney, specially authorized to that effect. — N. 36.

41. The public officer reads to the parties, or to their attorney, and to the witnesses, the act which he makes. — N. 38.

42. Acts of civil status are inscribed in two registers of the same tenor, kept for each Roman Catholic parish church, church, private chapel or mission, and for each Protestant church or congregation or other religious community, entitled by law to keep such registers, each of which is authentic, and has in law equal authority.— R. S. Q. 5777;[1] — N. 40. — C. 45 et s.

42*a*. The duplicate registers for acts of civil status may be divided into three volumes, one for acts of births, one for acts of marriage, and the third for acts of burial; or into two volumes, one for acts of birth and of marriage, and the other for acts of burial.

Such volumes of the duplicate registers may be either blank, or may be prepared with printed forms, running consecutively through each volume; but when one volume is used for acts of birth and of marriage, the first part shall contain, in consecutive order, the forms for acts of birth, and the last

[1] The Protestant churches or congregations referred to in article 42 of the Civil Code, comprise all churches and congregations in communion with the Church of England or Scotland, and the several religious communities and denominations in the Province, mentioned in the special acts concerning them, and the priests or ministers thereof, who may validly solemnize marriage, and may obtain and keep registers of civil status, subject to the provisions of the said acts with reference to each of them respectively.—R.S.Q. 5499.— *Vide* C. S. L. C., c. 20, s. 16, 17.

Vide R. S. Q. 5500 et s. for special provisions as to registers of civil status in a certain portion of the district of Saguenay.

part, the forms for acts of marriage. — *Id.* 5778.

42*b*. Whenever the duplicate registers are divided into volumes and are in printed forms, a sufficient number of blank pages shall be placed at the end of the volume for the certificates of death of persons whose bodies have been, before burial, delivered to a school of medicine or university for the purposes of the study of anatomy. — Id.

42*c*. An alphabetical index is made at the end of each duplicate of the registers of civil status for each church, congregation or other religious community, by the person entitled by law to keep such registers. — Id.

43. The registers are furnished by the churches, congregations or religious communities, and must be in the form prescribed by the Code of Civil Procedure. — N. 40. — P. 1311 et s.

44. The registers are kept by the rector, curate, priest or minister having charge of the churches, congregations or religious communities, or by any other officer entitled so to do.

In the case of Roman Catholic churches, private chapels or missions they are kept by any priest authorized by competent ecclesiastical authority to celebrate marriages or administer baptism and perform the rites of burial. — N. 40. — C. 129. — R. S. Q. 5779.

45. The duplicate register so kept, before it is used, must, at the instance of the party keeping it, be presented to one of the judges of the Superior Court or to the prothonotary of the district, or to a clerk of the Circuit Court in the county, to be by such judge, prothonotary or clerk, numbered and initialed in the manner prescribed by the Code of Civil Procedure.

In the case of Roman Catholic churches, private chapels or missions, the register must be granted under the name mentioned in the certificate of authorization by the bishop, the ordinary of the diocese, the vicar general, or the administrator; and the priest on presenting the register for authentication must exhibit the certificate of authorization. — N. 41. — P. 1311. — R. S. Q. 5780.

46. Acts of civil status, as soon as they are made, are inscribed in the two registers, in successive order and without blanks; erasures and marginal notes are acknowledged and initialed by all those who sign the body of the act. Everything must be written at length without abbreviation or figures. — N. 42.

47. Within the first six weeks of each year, the person who kept the said registers, or who has charge thereof deposits in the office of the prothonotary of the

Superior Court of the district in which the registers were kept, one of the said duplicates.

Such delivery is acknowledged by a receipt which the prothonotary is bound to give, free of charge. — N. 43, 44. — R. S. Q. 5781.

48. Within six months after such deposit, each prothonotary is bound to verify the condition of the registers deposited in his office, and to draw up a summary report of such verification. — N. 43. — Id. 5782.

49. The other duplicate register remains in the custody and possession of the priest, minister or other officer who kept the same, to be by him preserved and transmitted to his successor in office.

In the case of a Roman Catholic mission, such other duplicate is deposited by the priest in charge of such mission at the palace of the bishop of the diocese to which the mission belongs; and for the purpose of authenticating copies or extracts from any such register and for all other purposes connected therewith, the bishop or his secretary is deemed to be the depositary thereof.—N. 43, 45.—P. 1312. — R. S. Q. 5783.

50. The depositary of either of the registers is bound to give extracts thereof to any person who may require the same; and such extracts, being certified and signed by him, are authentic. — N. 45.

51. On proof that, in any parish or religious community no registers have been kept, or that they are lost, the births, marriages and deaths may be proved either by family registers and papers, or other writings, or by witnesses. — N. 46. — C. 159, 232, 233.

52. Every depositary of such registers is civilly responsible for any alteration made therein, saving his recourse, if any there be, against the party altering the same. — N. 51.

53. Every infraction of any article of this title by any of the officers therein named, which does not amount to a criminal offence, and which is not punishable as such, is punished by a penalty not exceeding eighty dollars, nor less than eight. — N. 50. — P. 1313.

53*a*. The father, or in case of his death or absence, the mother, of every child born, who has not caused such child to be baptized, or who, being of a creed other than Roman Catholic, has not caused the birth of such child to be registered by the persons authorized to keep a register of acts of civil status, is bound to cause the birth of such child to be registered, within four months from the date thereof, at the office of the secretary-treasurer or of the clerk of the municipality or city of his domicile, or else with the

nearest justice of the peace; and the latter shall during the first two weeks of the month of January in each year, make to the secretary-treasurer or to the clerk of the municipality or city a report of the births by him so registered. — R. S. Q., 5784.

Such secretary-treasurer or clerk of the municipailty or city shall, immediately, enter such declaration in a duplicate register kept by him for the purpose, after having such register duly initialed as required by article 45 of this Code and article 1311 of the Code of Civil Procedure, one of which duplicates he shall, at the end of the year, deposit in the office of the prothonotary of the district.

Copies of and extracts from such registers may be made and certified by such secretary-treasurer or clerk or by the prothonotary to avail as if ordinary acts of civil status.

Any contravention of any one of the provisions of this article shall be punishable by a fine of fifty dollars.—6 Ed. VII, c. 39, s. 1.

53*b*. Every person, authorized to celebrate marriages, or to preside at burials, who is not authorized to keep registers of Civil Status, shall immediately prepare, in accordance with the provisions of the Civil Code, an act of every marriage which he celebrates and of every burial at which he presides, and, within thirty days after such marriage or burial, forward the same, with a solemn declaration attesting the truth thereof, to the prothonotary of the district in which the marriage was celebrated or the burial took place. — 57 V., c. 44.[1]

CHAPTER SECOND.

OF ACTS OF BIRTH.

54. Acts of birth set forth the day of the birth of the child, that of its baptism, if performed, its sex, and the names given to it; the names, surnames, occupation and domicile of the father and mother, and also of the sponsors, if any there be. — N. 57.

55. These acts are signed in both registers, by the officer officiating, by the father and mother if present, and by the sponsors if any there be; if any of them cannot sign, their declaration to that effect is noted. — N. 39.

56. When the father and mother of any child presented to the public officer are either or both of them unknown, the fact is mentioned in the register. — N. 55, 56, 58. — C. 232.

[1] According to 57 V., c. 44, this article shall apply to all marriages and burials that have taken place since the year 1860, provided the acts are drawn and forwarded within thirty days after the coming into force of this article. — 67 V., c. 44.

CHAPTER THIRD.

OF ACTS OF MARRIAGE.

57. Before solemnizing a marriage, the officer who is to perform the ceremony must be furnished with a certificate establishing that the publication of bans required by law has been duly made; unless he has published them himself, in which case such certificate is not necessary. — N. 63. — C. 130 et s., 157.

58. This certificate, which is signed by the person who published the bans, mentions, as do also the bans themselves, the names, surnames, qualities or occupations and domiciles of the parties to be married, and whether they are of age or minors; the names, surnames, occupations and domiciles of their fathers and mothers, or the name of the former husband or wife. And mention is made of this certificate in the act of marriage.—N. 63, 166. — C. 65, § 4.

59. The marriage ceremony may however be performed without this certificate, if the parties have obtained and produce a dispensation or license, from a competent authority, authorizing the omission of the publication of bans. — N. 63. — C. 65, § 4, 134, 157.

59*a*. In so far as regards the solemnization of marriage by ministers of any religious denomination other than the Roman Catholic religion, marriage licenses are issued by the Department of the Provincial Treasurer, under the hand and seal of the Lieutenant-Governor, who, for the purposes thereof, is the competent authority under the preceeding article.

The minister, who has performed any marriage ceremony under the authority of such license, is not subject to any action or liability for damages or otherwise, by reason of there being any legal impediment to the marriage, unless, at the time when he performed such ceremony, he was aware of the existeence of such impediment. — 3 Ed. VII, c. 47.

60. If the marriage be not solemnized within one year from the last of the publications required, they are no longer sufficient and must be renewed. — N. 65.

61. In the case of an opposition, the disallowance thereof must be obtained and be notified to the officer charged with the solemnization of the marriage. — N. 68. — C. 136 et s. — P. 1109.

62. If, however, the opposition be founded on a simple promise of marriage, it is of no effect, and the marriage is proceeded with as if no such opposition had been made.

63. The marriage is solemnized at the place of the domicile of one or other of the parties. If solemnized elsewhere, the person offi-

ciating is obliged to verify and ascertain the identity of the parties.

For the purposes of marriage, domicile is established by a residence of six months in the same place. — N. 74. — C. 131.

64. The act is signed by the officer who solemnizes the marriage, by the parties, and by at least two witnesses, related or not, who have been present at the ceremony; and if any of them cannot sign, their declaration to that effect is noted.

65. In this act are set forth:

1. The day on which the marriage was solemnized;

2. The names, surnames, quality or occupation and domicile of the parties married, the names of the father and mother of each, or the name of the former husband or wife;

3. Whether the parties are of age, or minors;

4. Whether they were married after publication of bans, or with a dispensation or license;

5. Whether it was with the consent of their father, mother, tutor or curator, or with the advice of a family council, when such consent or advice is required;

6. The names of the witnesses, and whether they are related or allied to the parties, and if so, on which side, and in what degree;

7. That there has been no opposition, or that any opposition made has been disallowed. — N. 76.

CHAPTER FOURTH.

OF ACTS OF BURIAL.[1]

66. No burial can take place before the expiration of twenty-four hours after the decease; and whoever knowingly takes part in any burial before the expiration of such time, except in cases provided for by police regulations, is subject to a penalty of twenty dollars. — N. 77.

66*a*. It belongs solely to the Roman Catholic ecclesiastical authority to designate the place in the cemetery, in which each individual of such faith shall be buried; and if the deceased cannot, according to the canon rules and laws, in the judgment of the ordinary, be interred in ground consecrated by the liturgical prayers of such religion, he receives civil burial, in ground reserved for that purpose and adjacent to the cemetery. — R. S. Q., 5786.

67. The act of burial mentions the day of the burial, and that of the death, if known; the names, surnames, and quality or occupation of the deceased; and it is signed by the person performing the burial service, and by two of the nearest relations

[1] *Vide* R. S. Q. 3458 et s., as to Internments and Desinternments and amendments 59 V., c. 28. — 1 Ed. VII, c. 23.

or friends there present; if they cannot sign, mention is made thereof. — N. 79.

68. The provisions of the two preceding articles apply to religious communities and hospitals where burials are permitted. — N. 80.

69. When there is any sign or indication of death having been caused by violence, or when there are other circumstances which give reason to suspect it, or when the death happens in any prison, asylum, or place of forcible confinement other than lunatic asylums, the burial cannot be proceeded with until it is authorized by the coroner or other officer whose duty it is to inspect the body in such cases. — N. 81.

69*a*. The body of no person who died of a contagious disease shall be disinterred until after the expiration of five years from its interment or of such period as may be fixed by the Provincial Board of Health.

Subject to the preceding provision and by observing the formalities prescribed by the law respecting interments and disinterments, one or more bodies may be removed from any church, chapel or cemetery, for the purpose of building, repairing or selling such church, chapel or cemetery, or re-interring the bodies in another part of the same or in any other church, chapel or cemetery, or of rebuilding or repairing the tomb or coffin in which a body is buried. — R. S. Q. 5787.

CHAPTER FIFTH.

OF ACTS OF RELIGIOUS PROFESSION,

70. In every religious community in which profession may be made by solemn and perpetual vows, two registers of the same tenor are kept, in which are inscribed the acts establishing the taking of such vows. — C. 34.

71. [These registers are numbered and initialed like the other registers of civil status, and the acts are inscribed therein in the manner prescribed in article 46.] — C. 45. — P. 1311 et s.

72. The acts set forth the names and surnames, and the age of the person making profession, the place of her birth and the names and surnames of her father and mother.

They are signed by the party, by the superior of the community, by the bishop or other ecclesiastic who performs the ceremony, and by two of the nearest relations, or by two friends who were present.

73. The registers are used during five years, after which one of the duplicates is deposited in the manner declared in article 47, and the other remains with the community to form part of its records.

74. Extracts of such registers, signed and certified by

the superior of the community, or the depositary of one of the duplicates, are authentic, and are delivered by one or other of them at the option and on the demand of those requiring them.—C. 50.

CHAPTER SIXTH.

OF THE RECTIFICATION OF ACTS AND REGISTERS OF CIVIL STATUS.

75. If an error have been committed in the entry made in the register of an act of civil status, the court of original jurisdiction in the office of which such register is or is to be deposited may, at the instance of any interested party, order such error to be rectified in presence of the other parties interested. — N. 99. — P. 1314 et s.

76. The depositaries of the registers, on receipt of a copy of any judgment of rectification, are bound to inscribe the same on the margin of the act so rectified, and if there be no margin, then on a sheet of paper which remains annexed thereto.

77. [If an act which ought to have been inserted in the register be entirely omitted, the same court may, at the instance of one of the parties interested, the others being notified, order that such omission be supplied, and the judgment so ordering is inscribed on the margin of the said register, at the place where the act so omitted ought to have been entered, and if there be no margin, then on a sheet of paper which remains annexed thereto.] — N. 99.

78. The judgment of rectification cannot, at any time, be set up against those who did not seek it, or who were not duly notified. — N. 100.

CHAPTER SEVENTH.

OF REPLACING REGISTERS OF CIVIL STATUS WHICH HAVE BEEN LOST OR DESTROYED.

78*a*. Whenever registers of civil status have been lost or destroyed, in whole or in part, the officer charged with keeping them may, upon a resolution of the *fabrique*, trustees, or religious community interested, establishing such loss or destruction, obtain from the prothonotary of the district, in whose office such registers are deposited, a copy of the whole or of any part thereof, on payment of six cents for each certificate of baptism or of burial, and of eighteen cents for each certificate of marriage. — 60 V., c. 50, s. 3.

78*b*. The registers and books necessary for making such copies are furnished by the *fabrique*, trustees, or religious community interested, and must be numbered and initialed in the manner prescribed by the Code of Civil Procedure. — *Id.* — P. 1311.

Such formailty may be accomplished at any time before the prothonotary's certificate of authenticity is affixed. — 4 Ed. VII, c. 40, s. 1.

78*c*. Such copy of the registers must be a *fac simile* of the sole existing duplicate.— 60 V., c. 50.

78*d*. The certificate of authenticity of such copies of registers must be appended by the prothonotary after the last entry in each book or register. — Id.

78*e*. Every copy of registers, so authenticated and delivered, is considered as an original register; and extracts, certified by the depositary of the said registers, are authentic; but such depositary must declare, in the extracts which he delivers, that the registers from which they are taken are copies, so certified, of the only existing duplicate. — Id.

78*f*. Any person authorized to keep registers of civil status may, with the authorization of the *fabrique*, trustees, or religious community interested, at the expense of the parish, church, mission, congregation or religious community to which he is attached, replace, in so far as the writing may be deciphered, the said registers of civil status kept up to the year 1800, in his custody, by others, reproducing them as exactly as possible. — Id.

78*g*. Any such person, so authorized to keep registers of civil status, after having carefully compared such copy kept by him with the original, must affix at the end thereof a certificate attesting that it has been examined and compared and that it agrees with the register of which it is a copy.

Such certificate is made under oath before the prothonotary of the Superior Court of the district.

Such copy must be authenticated and initialed by the prothonotary before being used. — Id.

78*h*. Notwithstanding the authenticity of such copy, which has the same effect as the original register, the latter must be preserved, so that reference may be had thereto. — *Id.*

78*i*. Whenever the duplicate register intended for deposit in the office of the prothonotary of the Superior Court, has been lost or destroyed in whole or in part, the officer charged with keeping the same shall, upon a resolution of the *fabrique*, trustees or religious community interested, establishing such loss or destruction, make, in a register numbered and initialed as provided in the Code of Civil Procedure, a *fac simile* copy of the whole or any part of the sole existing duplicate of such register in his possession, and shall certify to the same under oath before the protonotary.

Such copy shall thereupon

be and remain deposited in the office of the protonotary and shall have the same effect as the duplicate lost or destroyed.—62 V., c. 48, s. 1.

The register may thus be numbered at any time before the authenticity thereof is attested by the protonotary. — 4 Ed. VII, c. 40.

78*j*. Whenever the duplicate of a register of civil status, deposited in the office of the court, is lost or destroyed wholly or in part, the Lieutenant-Governor in Council may authorize a competent person, to make in a register paged, initialed and authenticated as required by article 1311 of the Code of Civil Procedure, an exact copy of the existing duplicate, and the official who has charge of such duplicate shall place it at the disposal of the person authorized to make such copy.

Such person after having carefully compared the copy he has made, with the original, shall place at the end of such copy a certificate under oath taken before the prothonotary, that it has been compared and found correct.

The copy so certified, shall be deposited and remain in the office of the court, and shall have the same effect as an original register. — 9 Ed. VII, c. 69, s. 1.

TITLE THIRD.

OF DOMICILE.

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79. The domicile of a person, for all civil purposes, is at the place where he has his principal establishment.—N. 102. — C. 6, 63, 1152. — P. 94 et s.

80. Change of domicile is effected by actual residence in another place, coupled with the intention of the person to make it the seat of his principal establishment—N. 103.

81. The proof of such intention results from the declarations of the person and from the circumstances of the case. — N. 104, 105.

82. A person appointed to fill a temporary or revocable public office, retains his former domicile, unless he manifests a contrary intention.—N. 106.

83. A married woman, not separated from bed and board, has no other domicile than that of her husband.

The domicile of an unemancipated minor is with his father and mother, or with his tutor.

The domicile of a person of the age of majority interdicted for insanity is with his curator. — N. 108. — C. 175, 207, 244, 290, 343.

84. The domicile of persons of the age of majority, who serve or work continuously for others, is at the residence of those whom they serve or for whom they work, if they reside in the same house. — N. 109.

85. When the parties to a deed have, for the purpose of such deed, made election of domicile in any other place than their real domicile, all notifications, demands and suits relating thereto may be made at the elected domicile, and before the judge of such domicile. — P. 129, 585.

The fact of dating a promissory note or other writing whatever at a place, or of making it payable at a place, other than that where it was really made and passed, does not constitute an election of domicile at such place. — 63 V., 38. — N. 111. — C. 1152, 1163, 1165, 2136.

TITLE FOURTH.

OF ABSENTEES.

GENERAL PROVISION.

86. An absentee, within the meaning of this title, is one who, having had a domicile in Lower Canada, has disappeared, without any one having received intelligence of his existence.

CHAPTER FIRST.

OF CURATORSHIP TO ABSENTEES.

87. If it be necessary to provide for the administration of the property of an absentee who has no attorney, or whose attorney is unknown or refuses to act, a curator may be appointed for that purpose.—N. 112.—C. 347 et s.

88. The necessity for such appointment is determined, at the instance of those interested, on the advice of a family council called and composed in the manner provided in the title *Of Minority, Tutorship and Emancipation*, and homologated by the court, or by one of its

judges, or by the prothonotary. — N. 115. — C. 250 et s. — P. 1331, 1337.

89. Curators to the property of absentees make oath faithfully to fulfil the duties of their office and to account. — C. 347*a*.

90. The curator is bound to cause to be made, in notarial form, a faithful inventory and valuation of all the property committed to his charge, and for his administration he is liable to the same obligations as those to which tutors are subject. — C. 290 et s. — P. 1387 et s.

91. The powers of such curator extend to acts of administration only; he can neither alienate, pledge nor hypothecate the property of the absentee.

92. The curatorship to the absentee is brought to an end:

1. By his return;

2. By his sending a power of attorney to the curator or to any other person;

3. By his heirs being authorized to take provisional possession of his property, in the cases provided by law.

CHAPTER SECOND.

OF THE PROVISIONAL POSSESSION OF THE HEIRS OF ABSENTEES.

93. Whenever a person has ceased to appear at his domicile or place of residence, and has not been heard of for a period of (five) years, his presumptive heirs at the time of his departure or of the latest intelligence received, may obtain from the court or the judge authority to take provisional possession of his property, on giving security for their due administration of it. — N. 120, 121, 122. — 60 V., c. 50, s. 4. —P. 1422 et s.

94. Provisional possession may be authorized before the expiration of such delay, if it be established to the satisfaction of the court or the judge that there are strong presumptions that the absentee is dead. — N. 117. — 60 V., c. 50, s. 5.

95. In pronouncing on such demand, the court or the judge takes into account the reasons of the absence and the causes which may have prevented the reception of intelligence concerning the absentee. — N. 117. — 60 V., c. 50., s. 6.

96. Provisional possession is a trust which gives to those who obtain it, the administration of the property of the absentee and makes them liable to account to him or to his heirs and legal representatives. — N. 125. — C. 2039.

97. Those who have obtained provisional possession are bound to make an inventory, before a notary, of the movable property and title deeds of the absentee, [and to cause the immovable property to be visited by skilled persons for the purpose of ascertaining its

condition. Their report is homologated by the court or the judge, and the costs are paid out of the absentee's property.]

The court or the judge which granted the possession may, if there be ground for it, order the sale of the movables or of any part of them; in which case, the price of such sale is invested, as are also all rents, issues and profits accrued. — N. 126. — 60 V., c. 50, s. 7. — P. 1387 et s.

98. If the absence have continued during thirty years from the day of the disappearance, or from the latest intelligence received, or if a hundred years have elapsed since his birth, the absentee is reputed to be dead from the time of his disappearance or from the latest intelligence received; in consequence, if provisional possession have been granted, the sureties are discharged, the partition of the property may be demanded by the heirs or others having a right to it, and the provisional possession becomes absolute. — N. 129.

99. Notwithstanding the presumptions mentioned in the preceding article, the succession of the absentee devolves from the day on which he is proved to have died, to the heirs entitled at such time to his estate; and those who have been in the enjoyment of the absentee's property are bound to restore it. — N. 130. — C. 601.

100. If the absentee reappear, or if his existence be proved during the provisional possession, the judgment granting it, ceases to have effect. — N. 131.

101. If the absentee reappear, or if his existence be proved, even after the expiration of the hundred years of life or of the thirty years of absence, as mentioned in article 98, he recovers his property in the condition in which it then is, and the price of what has been sold, or the property arising from the investment of such price. — N. 132. — C. 2203, 2232.

102. The children and direct descendants of the absentee may likewise, within the thirty years from the time at which the said possession becomes absolute, claim the restitution of his property, as mentioned in the preceding article. — N. 133.

103. After the judgment authorizing provisional possession, persons having claims against the absentee can only enforce them against those who have been authorized to take possession. — N. 134.

CHAPTER THIRD.

OF THE EFFECT OF ABSENCE IN RELATION TO CONTINGENT RIGHTS WHICH MAY ACCRUE TO THE ABSENTEE.

104. Whoever claims a

right accruing to an absentee must prove that such absentee was living at the time the right accrued; in default of such proof his demand is not admitted. — N. 135.

105. If an absentee be called to a succession, it devolves exclusively to those who would have shared with him, or to those who would have succeeded in his stead. — N. 136.

106. The provisions of the two preceding articles do not affect actions for the recovery of inheritances and of other rights, which actions belong to the absentee, his heirs and legal representatives, and are only extinguished by the lapse of time required for prescription.—N. 107.—C. 2203, 2232.

107. So long as the absentee does not reappear, or actions are not brought on his behalf, those to whom the succession has devolved make the profits received by them in good faith their own.—N. 138.—C. 411, 412.

CHAPTER FOURTH.

OF THE EFFECTS OF ABSENCE IN RELATION TO MARRIAGE.

108. The presumptions of death arising from absence, whatever be its duration, do not apply in the case of marriage; the husband or wife of the absentee cannot marry again without producing positive proof of the death of such absentee. — C. 118, 185.

109. If there be community of property between the consorts, such community is provisionally dissolved, from the day of the demand to that effect by the presumptive heirs, after the time required for obtaining authority to take possession of the absentee's property, or from the date of the action that the consort who is present brings against them, for the same purpose; and in these cases, the liquidation and partition of the property of the community may be proceeded with on the demand of such consort, or of the persons authorized to take provisional possession, or of any other parties interesteed. — C. 1310.

110. In the cases provided for in the preceding article, the covenants and rights of the consorts, dependent on the dissolution of the community, become effective and absolute. — C. 1310.

111. If the husband be the absentee, the wife may obtain possession of all the matrimonial profits and advantages resulting from the law or from her marriage contract; but on condition of giving good and sufficient security to account for and restore all that she shall have so received, should the absentee return. — C. 1404, 1438.

112. If the absent consort

have no relations entitled to his succession, the consort who is present may obtain provisional possession of the property. — N. 140. — C. 606, 636.

CHAPTER FIFTH

OF THE CARE OF MINOR CHILDREN OF A FATHER WHO HAS DISAPPEARED.

113. If a father have disappeared, leaving minor children issue of his marriage, the mother has the care of such children and exercises all the rights of her husband as to their person and as to the administration of their property, until a tutor is appointed.— N. 141. — C. 243 et s., 245, 264, 282.

114. After the disappearance of the father, if the mother be dead or unable to administer the property, a provisional or a permanent tutor may be appointed to the minor children.—N. 142.

TITLE FIFTH.

OF MARRIAGE.

CHAPTER FIRST.

OF THE QUALITIES AND CONDITIONS NECESSARY FOR CONTRACTING MARRIAGE.

115. A man cannot contract marriage before the full age of fourteen years, nor a woman before the full age of twelve years. — N. 144. — C. 153, 154.

116. There is no marriage when there is no consent. — N. 146. — C. 148, 149.

117. Impotency, natural or accidental, existing at the time of the marriage, renders it null; but only if such impotency be apparent and manifest.

This nullity cannot be invoked by any one but the party who has contracted with the impotent person, [nor at any time after three years from the marriage. —] N. 180, 313.

118. A second marriage cannot be contracted before the dissolution of the first.— N. 147. — C. 108, 136, 185, 206.

119. Children who have not reached the age of twenty-one years must obtain the consent of their father and mother before contracting marriage ; in

case of disagreement, the consent of the father suffices. — N. 148. — C. 137, 150, 151, 243.

120. If one of them be dead or unable to express his will, the consent of the other suffices. — N. 149.

121. A natural child who has not reached the age of twenty-one years must be authorized, before contracting marriage, by a tutor *ad hoc* duly appointed for the purpose. — N. 159. — C. 150, 151.

122. If there be neither father nor mother, or if both be unable to express their will, minor children, before contracting marriage, must obtain the consent of their tutor, or, in cases of emancipation, their curator, who is bound, before giving such consent, to take the advice of a family council, duly called to deliberate on the subject. — N. 160. — C. 138, et s., 150, 151.

123. Respectful requisitions to the father and mother are no longer necessary.

124. In the direct line, marriage is prohibited between ascendants and descendants, and between persons connected by alliance, whether they are legitimate or natural. — N. 161. — C. 152, 155.

125. In the collateral line, marriage is prohibited between brother and sister, legitimate or natural, and between those connected in the same degree by alliance whether they are legitimate or natural; but it is permitted between a man and his deceased wife's sister. — R. S. Q., 6230, and 45 V., C. c. 42. — N. 162.

126. Marriage is also prohibited between uncle and niece, aunt and nephew. — 53 V., C. 36, s. 1. — N. 163.[1]

127. The other impediments recognized according to the different religious persuasions, as resulting from relationship or affinity or from other causes, remain subject to the rules hitherto followed in the different churches and religious communities.

The right, likewise, of granting dispensations from such impediments appertains, as heretofore, to those who have hitherto enjoyed it. — C. 129.

CHAPTER SECOND.

OF THE FORMALITIES RELATING TO THE SOLEMNIZATION OF MARRIAGE.

128. Marriage must be solemnized openly, by a competent officer recognized by law. — N. 165. — C. 156.

129. All priests, rectors, ministers and other officers authorized by law to keep

[1] *Vide* 53 V., C. c. 36, allowing marriage between a man and the daughter of his deceased wife's sister.

registers of acts of civil status, are competent to solemnize marriage.

But none of the officers thus authorized, can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and belief of his religion, and the discipline of the church to which he belongs. — C. 44, 127.

130. The publications of bans, required by articles 57 and 58, are made by the priest, minister or other officer, in the church to which the parties belong, at morning service or, if there be no morning service, at evening service, on three Sundays or holydays, and in the case of persons belonging to the Jewish religion, on three Saturdays or holidays, with reasonable intervals. If the parties belong to different churches, these publications take place in each of such churches. — C. 60, 157. — 3 Ed. VII, c. 47.

131. If the actual domicile of the parties to be married has not been established by a residence of six months at least, the publications must also be made at the place of their last domicile in Lower Canada. — C. 63.

132. [If their last domicile be out of Lower Canada, and the publications have not been made there, the officer who, in that case, solemnizes the marriage, is bound to ascertain that there is no legal impediment between the parties.]

133. If the parties or either of them be, in so far as regards marriage, under the authority of others, the bans must be also published at the place of domicile of those under whose power such parties are. — N. 168.

134. The authorities who have hitherto held the right to grant licenses or dispensations for marriage, may exempt from such publications.—N. 169.—C. 59, 59a.

135. A marriage solemnized out of Lower Canada between two persons, either or both of whom are subject to its laws, is valid, if solemnized according to the formalities of the place where it is performed, provided that the parties did not go there with the intention of evading the law.—N. 170.—C. 7.

CHAPTER THIRD.

OF OPPOSITIONS TO MARRIAGE.

136. The solemnizing of a marriage may be opposed by any person already married to one of the parties intending to contract. — N. 172. — C. 118, 185.

137. The marriage of a minor may be opposed by his father or, in default of the latter, by his mother. — N. 173. — C. 119, 120.

138. In default of both father and mother, the tutor or, in cases of emancipation, the curator may also oppose

the marriage of such minor. — N. 175. — 60, V., c. 50. — C. 122. — P. 1111.

139. If there be neither father nor mother, tutor nor curator, or if the tutor or curator have consented to the marriage without taking the advice of a family council, the grandfathers and grandmothers, the uncles and aunts, and the cousins-german, who are of full age, may oppose the marriage of their minor relative; but only in the two following cases:

1. When a family council, which, according to article 122, should have been consulted, has not been so;

2. When the party to be married is insane.—N. 174.

140. When opposition is made under the circumstances and by any of the persons mentioned in the preceding article, if the minor have neither tutor nor curator, the opposant is bound to cause one to be appointed; if the minor have already a tutor or curator, who has consented to the marriage without consulting a family council, the opposant must cause a tutor *ad hoc* to be appointed; in order that such tutor, curator, or tutor *ad hoc* may represent the interests of the minor in such opposition.

141. [If a person about to be married, being of the age of majority, be insane, and not interdicted, the following persons may oppose the marriage, in the following order:

1. The father, and in his default, the mother;

2. In default of both father and mother, the grandfathers and grandmothers;

3. In default of the latter, the brothers or sisters, uncles or aunts, or cousins-german, of the age of majority;

4. In default of all the above, those related or allied to such person who are qualified to take part in the meeting of a family council, which should be consulted as to the interdiction.]

142. When the opposition is founded on the insanity of the person about to be married, the opposant is bound to apply for the interdiction and to have it pronounced without delay. — N. 174. — C. 325 et s.

143. [Whatever may be the quality of the opposant, it is his duty to adopt and follow up the formalities and proceedings necessary to have his opposition brought before the court and decided within the legal delays, a demand for its dismissal not being required; in default of his so doing, the opposition is regarded as never having made, and the marriage ceremony is proceeded with, notwithstanding.] — C. 61, 62, 65, § 7.

144. The Code of Civil Procedure contains the rules

as to the form, contents and notification of oppositions to marriage, as well as those relative to the peremption mentioned in the preceding article, and to the other proceedings required. — P. 1105 et s.

145. Repealed by 60 V., c. 50, s. 9.

146. Repealed by 60 V., c. 50, s. 9, and placed in the Code of Civil Procedure, arts. 1105 and 1112.

147. If the opposition is dismissed, the opposants, other than the father and mother, are liable for damages according to circumstances, without prejudice to the condemnation to costs, in the manner stated in the Code of Civil Procedure, 60 V., c. 50, s. 10. — N. 179. — P. 1113.

CHAPTER FOURTH.

OF ACTIONS FOR ANNULING MARRIAGE.

148. A marriage contracted without the free consent of both parties, or of one of them, can only be attacked by such parties themselves, or by the one whose consent was not free.

When there is error as to the person, the marriage can only be attacked by the party led into error. — N. 180. — C. 116.

149. [In the cases of the preceding article, the party who has continued cohabitation during six months after having acquired full liberty or become aware of the error, cannot seek the nullity of the marriage.] — N. 181.

150. A marriage contracted without the consent of the father or mother, tutor or curator, or without the advice of a family council, in cases where such consent or advice was necessary, can only be attacked by those whose consent or advice was required. — N. 182. — C. 119 et s.

151. [In the cases of articles 148 and 150, an action for annuling marriage cannot be brought by the husband or wife, tutor or curator, or by the relations whose consent is required, if the marriage have been either expressly or tacitly approved by those whose consent was necessary; nor if six months have been allowed to elapse without complaint on their part since they became aware that the marriage had taken place.] — N. 183.

152. Any marriage contracted in contravention of article 124, 125 and 126, may be contested either by the parties themselves, or by any of those having an interest therein. — N. 184. — C. 155.

153. But a marriage contracted before the parties or either of them have attained the age required, can no longer be contested:

1. When six months have elapsed since the party or

parties have attained the proper age;

2. When the wife, under that age, has conceived before the termination of the six months. — N. 185. — C. 115.

154. The father, mother, tutor or curator, or the relations who have consented to the marriage, in the cases mentioned in the preceding article, are not allowed to seek the nullity of such marriage. — N. 186.

155. In the cases referred to in article 152, where the action for annulling the marriage belongs to all those interested, the interest must be existing and actual, to permit the exercise of the right of action by the grandparents, collateral relatives, children born of another marriage, and third persons. — N. 187.

156. Every marriage which has not been contracted openly, nor solemnized before a competent officer, may be contested by the parties themselves and by all those who have an existing and actual interest, saving the right of the court to decide according to the circumstances. — N. 191. — C. 128.

157. [If the publications required were not made, or their omissions supplied by means of a dispensation or licence, or if the legal or usual intervals for the publications or the solemnization have not elapsed, the officer solemnizing the marriage under such circumstances, is liable to a penalty not exceeding five hundred dollars.] — N. 192. — C. 57, 59, 130.

158. [The penalty imposed by the preceding article is in like manner incurred by any officer who, in the execution of the duty imposed upon him, or which he has undertaken, as to the solemnization of a marriage, contravenes the rules prescribed in that respect by the different articles of the present title.] — N. 193.

159. No one can claim the title of husband or wife and the civil effects of marriage, unless he produces a certificate of the marriage, as inscribed in the registers of civil status, except in the cases provided for by article 51. — N. 194.

160. Possession of the status does not dispense those who pretend to be husband and wife, from producing the certificate of their marriage. — N. 915.

161. When the parties are in possession of the status, and the certificate of their marriage is produced, they cannot demand the nullity of such act. — N. 196.

162. Nevertheless, in the case of articles 159 and 160, if there be children issue of two persons who lived publicly as husband and wife, and who are both dead, the legitimacy of such children cannot be contested solely on the pretext that no certificate is produced, whenever

such legitimacy is supported by possession of the status uncontradicted by the act of birth. — N. 197. — C. 230, 231.

163. A marriage although declared null, produces civil effects, as well with regard to the husband and wife as with regard to the children, if contracted in good faith. — N. 201.

164. If good faith exist on the part of one of the parties only, the marriage produces civil effects in favor of such party alone and in favor of the children issue of the marriage. — N. 202.

CHAPTER FIFTH.

OF THE OBLIGATIONS ARISING FROM MARRIAGE.

165. Husband and wife contract, by the mere fact of marriage, the obligation to maintain and bring up their children. — C. N. 203. — C. 215.

166. Children are bound to maintain their father, mother and other ascendants, who are in want. — N. 205.

167. Sons-in-law and daughters-in-law are also obliged, in like circumstances, to maintain their father-in-law and mother-in-law, but the obligation ceases:

1. When the mother-in-law contracts a second marriage;

2. When the consort, through whom the affinity existed, and all the children issue of the marriage, are dead. — N. 206.

168. The obligations which result from these provisions are reciprocal. — N. 207.

169. Maintenance is only granted in proportion to the wants of the party claiming it and the fortune of the party by whom it is due. — N. 208.—P. 551, 594, §, 7, 599, §, 4.

170. Whenever the condition of the party who furnishes or of the party who receives maintenance is so changed that the one can no longer give or the other no longer needs the whole or any part of it, a discharge from or a reduction of such maintenance may be demanded. — N. 209.

171. If the person who owes a maintenance, justify that he cannot pay an alimentary pension, the court may order such person to receive and maintain in his house the party to whom such maintenance is due. — N. 210.

172. The court likewise decides whether the father or mother, who, although able to pay, offers to receive and maintain the child to whom a maintenance is due, shall in that case be exempted from paying an alimentary pension. — N. 211.

CHAPTER SIXTH.

OF THE RESPECTIVE RIGHTS AND DUTIES OF HUSBAND AND WIFE.

173. Husband and wife mutually owe each other fidelity,

succor and assistance. — N. 212.

174. A husband owes protection to his wife; a wife obedience to her husband. — N. 213.

175. A wife is obliged to live with her husband, and to follow him wherever he thinks fit to reside. The husband is obliged to receive her and to supply her with all the necessaries of life, according to his means and condition. — N. 214. — C. 83, 191, 207.

176. A wife cannot appear in judicial proceedings, without her husband or his authorization, even if she be a public trader or not common as to property; nor can she, when separate as to property, except in matters of simple administration. — N. 215. — C. 210. — P. 78.

177. A wife even when not common as to property, cannot give nor accept, alienate, nor dispose of property *inter vivos*, nor otherwise enter into contracts or obligations, unless her husband becomes a party to the deed, or gives his consent in writing; saving the provisions contained in the act 25 Vict., c. 66.

If, however, she be separate as to property, she may do and make alone all acts and contracts connected with the administration of her property. — N. 217. — C. 210, 643, 763, 906, 986, 1296, 1297, 1318, 1420, 1421, 1422, 1424.

178. If a husband refuse to authorize his wife to appear in judicial proceedings or to make a deed, the judge may give the necessary authorization. — N. 218. — C. 210, 643, 906, 1296, 1297, 1421, 1424.

179. A wife who is a public trader may, without the authorization of her husband, obligate herself for all that relates to her commerce; and in such case she also binds her husband, if there be community between them.

She cannot become a public trader without such authorization, express or implied. — N. 220. — C. 1296.[1]

180. If a husband be interdicted or absent, the judge may authorize his wife, either to appear in judicial proceedings or to contract.— N. 222. — C. C. 336o, 1297.

181. All general authorizations, even those stipulated by marriage contract, are only valid in so far as regards the administration of the wife's property.—N. 223.

182. A husband although a minor may, in all cases, authorize his wife who is of age; if the wife be a minor, the authorization of her husband, whether he is of age or a minor, is sufficient for those cases only in which an

[1] *Vide* R. S. Q. 5502*a*, (60 V., c. 49) as to registration necessary when wife separate as to property engages in commerce.
Vide art. 1834 C. as amended by 2 Ed. VII, c 38.

emancipated minor might act alone. — N. 224. — C. 314, 319 et s.

183. The want of authorization by the husband, where it is necessary, constitutes a cause of nullity which nothing can cover, and which may be taken advantage of by all those who have an existing and actual interest in doing so. — N. 225.

184. A wife may make a will without the authorization of her husband. — N. 226. — C. 832.

CHAPTER SEVENTH.

OF THE DISSOLUTION OF MARRIAGE.

185. Marriage can only be dissolved by the natural death of one of the parties; while both live, it is indissoluble. — N. 227. — C. 108, 118, 136, 206.

TITLE SIXTH.

OF SEPARATION FROM BED AND BOARD.

CHAPTER FIRST.

OF THE CAUSES OF SEPARATION FROM BED AND BOARD.

186. Separation from bed and board can only be demanded for specific causes; it cannot be based on the mutual consent of the parties. — N. 306. — P. 1100.

187. A husband may demand the separation on the ground of his wife's adultery. — N. 229.

188. A wife may demand the separation on the ground of her husband's adultery, if he keep his concubine in their common habitation. — N. 230.

189. Husband and wife may respectively demand this separation on the ground of outrage, ill usage or grievous insult committed by one toward the other. — N. 231. — C. 199.

190. The grievous nature and sufficiency of such outrage, ill-usage and insult, are left to the discretion of the court, which, in appreciating them, must take into consideration the rank, condition and other circumstances of the parties.

191. The refusal of a husband to receive his wife and to furnish her with the necessaries of life, according to his rank, means and condition, is another cause for

which she may demand the separation. — C. 175.

CHAPTER SECOND.

ON THE FORMALITIES OF THE ACTION FOR SEPARATION FROM BED AND BOARD.

192. Repealed by 60 V., c. 50, s. 11. Vide P. 1099, 1100.

193. Repealed by 60 V., c. 50, s. 11. Vide P. 1099, 1100.

194. The wife who desires to obtain a separation from bed and board must apply, by a petition setting forth her reasons and addressed to the judge, to be authorized to sue, and to be allowed to withdraw pending the suit to a place which she indicates. —60 V., c. 50, s. 12.—P. 1101.

195. If the alleged wrongs be found sufficient, the judge, in according to the wife the authorization to sue, allows her to leave her husband and to reside elsewhere during the suit. — N. 268.

196. The action for separation from bed and board is extinguished by a reconciliation of the parties taking place either since the facts which gave rise to the action, or after the action brought. N. 272.

197. In either case the action is dismissed.

The plaintiff may nevertheless bring another, for any cause which has happened since the reconciliation, and may in such case make use of the previous causes in support of the new action. — N. 273.

198. If the action be dismissed the husband is obliged to take back his wife, and the wife is obliged to return to her husband, within such delay as the court by its judgment determines.

199. When the action is brought for outrage, ill-usage, or grievous insult, although the same be well established, the court may refuse to grant the separation forthwith, and may suspend its judgment until a further day, which it appoints in order to afford the parties sufficient time to come to an understanding and reconciliation. — N. 259.

CHAPTER THIRD.

OF THE PROVISIONAL MEASURES TO WHICH THE ACTION FOR SEPARATION FROM BED AND BOARD MAY GIVE RISE.

200. The provisional care of the children remains with the father, whether plaintiff or defendant, unless the court or judge orders otherwise for the greater advantage of the children. — N. 267. — C. 243.

201. A wife sued in separation may leave her husband's domicile, and reside during the suit in a place indicated or approved of by the court or judge.

202. Whether the wife is plaintiff or defendant, she may demand an alimentary pension, in proportion to her wants and the means of her

husband; the amount is fixed by the court, which also orders the husband, if necessary, to deliver to the wife at the place to which she has withdrawn, the clothing she may require. — N. 268. — P. 1101.

203. [If the wife leave the place of residence assigned to her without the permission of the court or judge, the husband may claim to be liberated from the payment of the alimentary pension; he may even have her action dismissed, saving her recourse, should she refuse to obey the order given her to return within a given delay to the place she has thus quitted.] — N. 269.

204. A wife who is in community as to property, whether plaintiff or defendant in an action for separation from bed and board, may, from the date of the order mentioned in articles 195 and 201, obtain permission from the court or judge, to cause the moveable effects of such community to be attached for the preservation of the share which she will have a right to claim when the partition takes place; in consequence of which, her husband is bound as judicial guardian, to represent the things seized or their value when required. — N. 270. — P. 1102.

205. All obligations contracted by a husband, affecting the community, and all alienations made by him of the immoveable property of such community, subsequent to the rendering of the order mentioned in articles 195 and 201, are declared null, if it be established that such obligations or alienations were contracted or made in fraud of the rights of his wife. — N. 271.

CHAPTER FOURTH.

OF THE EFFECTS OF SEPARATION FROM BED AND BOARD.

206. Separation from bed and board, from whatever cause it arises, does not dissolve the marriage tie; neither husband nor wife, therefore, can contract a new marriage while both are living. — C. 118, 185.

207. The separation relieves the husband from the obligation of receiving his wife, and the wife from that of living with her husband; it gives the wife the right of choosing for herself a domicile other than that of her husband. — C. 83, 175. — P. 133.

208. Separation from bed and board carries with it separation of property; it deprives the husband of the rights which he had over the property of his wife, and gives to the wife the right to obtain restitution of her dowry, and of the property that she brought in marriage.

Unless by the judgment they are declared forfeited, which only takes place in

the case of adultery, the separation also gives the wife the right to claim the benefit of all the gifts and advantages conferred on her by the marriage contract; saving the rights of survivorship, to which such separation does not give rise, unless the contrary has been specially stipulated.—N. 311, 1452. — C. 1310, §. 3, 1322, 1404, 1438.

209. When community of property exists, the separation operates its dissolution, imposes on the husband the obligation of making an inventory, and gives to the wife, in case of acceptance, the right to demand the partition of the property, unless by the judgment she has been declared to have forfeited this right.

210. The separation renders the wife capable of suing and being sued, and of contracting alone for all that relates to the administration of her property; but for all acts and suits tending to alienate her immoveable property, she requires the authorization of her husband, or, upon his refusal, that of a judge. — R. S. Q. 5788. — C. 176 et s., 1318.

211. For whatever cause the separation takes place, the party against whom it has been declared, loses all the advantages granted by the other party. — N. 299, 1452.

212. The party who has obtained the separation, retains all the advantages granted by the other, although they may have been stipulated to be reciprocal and the reciprocity does not take place.— N. 300.

213. Either of the parties thus separated, not having sufficient means of subsistence, may obtain judgment against the other for an alimentary pension, which is fixed by the court, according to the condition, means and other circumstances of the parties. — N. 301.

214. The children are entrusted to the party who has obtained the separation, unless the court, after having, if it think proper, consulted a family council, orders, for the greater advantage of the children, that all or some of them be entrusted to the care of the other party, or of a third person. — N. 302.

215. Whoever may be entrusted with the care of the children, the father and mother respectively retain the right of watching over their maintenance and education, and are obliged to contribute thereto in proportion to their means. — N. 303. — C. 165.

216. Separation from bed and board judicially declared does not deprive the children, issue of the marriage, of any of the advantages allowed them by law or by the marriage covenants of their father and mother; but these rights only become open in the same way and under the

same circumstances as if there had been no such separation. — N. 304.

217. Husband and wife thus separated, for any cause whatever, may at any time reunite and thereby put an end to the effects of the separation.

By such reunion, the husband reassumes all his rights over the person and property of his wife, the community of property is re-established of right and, for the future, is considered as never having been dissolved.—C. 1320, 1321.

TITLE SEVENTH.

OF FILIATION.

CHAPTER FIRST.

OF THE FILIATION OF CHILDREN WHO ARE LEGITIMATE OR CONCEIVED DURING MARRIAGE.

218. A child conceived during marriage is legitimate and is held to be the child of the husband.

A child born on or after the one hundred and eightieth day after the marriage was solemnized, or within three hundred days after its dissolution, is held to have been conceived during marriage. — N. 312.

219. The husband cannot disown such a child even for adultery, unless its birth has been concealed from him; in which case he is allowed to set up all the facts tending to establish that he is not the father. — N. 313.

220. Neither can the husband disown the child on the ground of his impotency, either natural or caused by accident before the marriage. He may nevertheless disown it if, during the whole time that it may legally be presumed to have been conceived, he were, by reason of impotency not existing at the time of the marriage, of distance, or of any other cause, in the physical impossibility of meeting his wife. — N. 312, 313.

221. A child born before the one hundred and eightieth day after the marriage was solemnized, may be disowned by the husband. — N. 314.

222. Nevertheless a child born before the one hundred and eightieth day of the marriage, cannot be disown-

ed by the husband in the following cases:

1. If he knew of the pregnancy before the marriage;

2. If he were present at the act of birth, or if that act be signed by him, or contain the declaration that he cannot sign;

3. If the child be not declared viable. — N. 314.

223. [In all the cases where the husband may disown the child, he must do so:

1. Within two months, if he be in the place at the time of the birth;

2. Within two months after his return, if absent at the time of the birth;

3. Within two months of the discovery of the fraud, if the birth have been concealed from him.] — N. 316.

224. [If the husband die before disowning the child, but still being within the delay allowed for so doing, the heirs have two months to contest the legitimacy of the child from the time he has taken possession of the property of the husband, or from the time that the heirs have been disturbed by him in their possession.] — N. 317.

225. [Such disavowal, on the part of the husband or of his heirs, must be made by an action at law, directed against the tutor, or tutor *ad hoc*, appointed to the child, if he be a minor; and the mother, if living, must be made a party to the action.] — N. 318.

226. If the disavowal do not take place, [as prescribed in the present chapter,] the child which might have been disowned is held to be legitimate.

227. A child born after the three hundredth day from the dissolution of the marriage is held not to be the issue thereof and is illegitimate. — C. 218.

CHAPTER SECOND.

OF THE EVIDENCE OF THE FILIATION OF LEGITIMATE CHILDREN.

228. The filiation of legitimate children is proved by the acts of birth inscribed in the registers of civil status. — N. 319.

229. In default of such act, the uninterrupted possession of the status of a legitimate child is sufficient. — N. 320. — C. 228.

230. Such possession is established by a sufficient concurrence of facts, indicating the connection of filiation and relationship between the individual and the family to which he claims to belong.— N. 321.

231. No one can claim a status contrary to that which his act of birth, accompanied with the possession conformable to such act, gives him; and reciprocally no one can contest the status of him who has a possession

conformable to his act of birth. — N. 322. — C. 162.

232. In default of the act of birth and of an uninterrupted possession, or if the child have been described either under false names, or as being the child of unknown parents, the proof of filiation may be made by testimony; nevertheless this evidence can only be admitted when there is a commencement of proof in writing, or when the presumptions or indications resulting from facts then ascertained, are sufficiently strong to permit its admission. — N. 323. — C. 51, 56, 241.

233. A commencement of proof in writing results from the title-deeds of the family, the registers and papers of the father and mother, from public and even private writings proceeding from a party engaged in the contestation, or who would have had an interest therein had he been alive. — N. 324.

234. Proof of the contrary may be made by any means of a nature to establish that the claimant is not the child of the mother he claims to have, or even, the maternity being proved, that he is not the child of the husband of such mother. — N. 325.

235. The action of a child to establish his status is imprescriptible. — N. 328. — C. 2181.

236. This action cannot be brought by the heirs of a child who has failed to bring it, unless he died in minority, or within five years after his majority; but they may continue the action already brought. — N. 329.

CHAPTER THIRD.

OF ILLEGITIMATE CHILDREN.

237. Children born out of marriage, other than the issue of an incestuous or adulterous connection, are legitimated by the subsequent marriage of their father and mother. — N. 331.

238. Such legitimation takes place even in favor of the deceased children who have left legitimate issue, and in that case it benefits such issue. — N. 332.

239. Children legitimated by a subsequent marriage have the same rights as if they were born of such marriage. — N. 333.

240. The forced or voluntary acknowledgment by the father or mother of their illegitimate child, gives the latter the right to demand maintenance from each of them, according to circumstances. — C. 169 et s., 768.

241. An illegitimate child has a right to establish judicially his claim of paternity or maternity, and the proof thereof is made by writings or testimony, under the conditions and restrictions set forth in articles 232, 233 and 234. — N. 340, 341.

TITLE EIGHTH.

OF PATERNAL AUTHORITY.

242. A child, whatever may be his age, owes honor and respect to his father and mother. — N. 371.

243. He remains subject to their authority until his majority or his emancipation, but the father alone exercises this authority during marriage; saving the provisions contained in the act 25 Vict., c. 66. — N. 372. — C. 113, 119, 200.

244. An unemancipated minor cannot leave his father's house without his permission. — N. 374. — C. 83.

245. The father and, in his default, the mother of an unemancipated minor have over him a right of reasonable and moderate correction, which may be delegated to and exercised by those to whom his education has been entrusted. — N. 375.

TITLE NINTH.

OF MINORITY, TUTORSHIP AND EMANCIPATION.

CHAPTER FIRST.

OF MINORITY.

246. Persons of either sex remain in minority until they attain the full age of twenty-one years. — N. 388. — C. 324.

247. Emancipation only modifies the condition of the minor; it does not put an end to the minority, nor does it confer all the rights resulting from majority. — C. 314 et s.

248. The disabilities, rights and privileges resulting from minority, the acts the minor may do and the suits he may bring, the cases in which he may demand to be relieved, the manner and time of making the demand, and other like questions, are determined in the third book of the present code, and in the Code of Civil Procedure.

CHAPTER SECOND.

OF TUTORSHIP.

SECTION I.

Of the Appointment of Tutors.

249. All tutorships are dative; they are conferred on the advice of a family council, by a competent court or by any judge of such court, having civil jurisdiction in the district where the minor has his domicile, or by the prothonotary of such court. — C. 922. — P. 1331 et s., 1337. (1).

250. The convocation of a family council may be demanded by all those related or allied to the minor, without regard to the degree of relationship, by the subrogate-tutor, by the minor himself in certain cases, by his creditors, and by all other persons interested. — N. 406. — C. 268.

251. The persons to be called to a family council are those most nearly related or allied to the minor, to the number of seven at least, and taken, as equally as possible, from both the paternal and the maternal line.— N. 407. — C. 272.

252. With the exception of the mother and other female ascendants during widowhood, the relations must be males, of the full age of twenty-one years, and residing in the district where the appointment of a tutor is to be made.

253. If, however, a sufficient number be not found in the district, they may be taken in other districts, and even in default of relations of both lines, the friends of the minor may be called to form or to complete the number required. — N. 409.

254. Persons related or allied to the minor, qualified to make part of the family council, and who have not been called, have a right to attend, and to give their advice as if they had been called.

255. The judge or prothonotary, on petition of a competent person, calls before him the relations, connections, or friends of the minor who are to compose the family council, and for this purpose, grants an order which is notified to the parties at the instance of the person seeking the convocation.

256. If the persons to be called reside at a greater distance than five leagues, the court, judge or prothonotary may, if requested, authorize a notary or other competent person to hold such family council at the

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[1] *Vide* R. S. Q. 5504 instituting certain persons legal tutors to children who are found and who are in certain institutions.

place where such parties reside, to administer the necessary oath, to take their advice on the appointments to be made, and even to administer the oath of office to the tutor chosen.

257. In every case in which, according to the preceding articles, a judge may call before him, or delegate the right to call a family council, it is lawful for any notary, residing or present at the place where the meeting is to be held, without regard to distance, to call it himself without the authorization of the judge, and to act therein in the same manner in every respect as if he had been delegated by the judge.

258. The notary can, however, act in conformity with the preceding article, only when he is requested to do so by one of those at whose instance such council might have been called before a judge; and in such case, the petitioner makes a declaration before the notary, of the object and motives of his demand, in the same manner as if it were addressed to a judge. Of this declaration the notary must draw up an act in writing.

259. Family councils thus called by notaries, are composed in the same manner as those called before a judge. It is only in default of persons related or allied to the minor, that his friends are admitted, and this default must be verified by the notary, and mentioned in his report.

260. The declaration required by article 258 is first read to the family council; the notary takes their advice and draws up an act in writing of their deliberation, which act must mention the oppositions that were made, and the different opinions which were given, as also the quality, place of residence, and degree of relationship of those who composed the meeting.

261. In all cases where a family council is called and held by a notary, whether delegated by a judge or prothonotary or not, such notary is bound to make a complete and circumstantial report of his proceedings to the proper court or judge, or prothonotary, accompanied with the acts and declarations that it is his duty to draw up. — C. 279, 280.

262. The court, judge or prothonotary receiving this report, may homologate or reject the proceedings therein contained, which, without homologation, produce no effect. They may likewise make any order relative to such proceedings that they deem advisable, in the same manner as if the family council had been called before them.

263. In all cases where a tutor has been appointed out of court, the court may, on

the petition of any one entitled to have a meeting of the family council called, and after having heard the tutor, cancel his appointment and order a new one. — P. 1310.

264. One tutor only is named to each minor, unless he has immovable property in places remote from one another, or in different districts, in which cases a tutor may be appointed for each place or district wherein such immovable property is situated. These tutors are independent of one another; each of them is only liable for that portion of the property which he has administered.

The tutor of the domicile of the minor has the care of his person.

Nevertheless, in certain cases, a separate tutor may be appointed to the person of the minor.

The mother or other female ascendant, who has remarried, may also be appointed joint-tutor with her second husband. — N. 417. — C. 282 § 3, 283.

265. A tutor acts and administers, as such, from the time of his appointment, if it take place in his presence, otherwise from the time of his being notified of it. — N. 418. — C. 281, 291. — P. 594 § 6.

266. Tutorship is a personal office which does not pass to the heirs of the tutor. They are simply responsible for his administration. If they be of age, they are bound to continue such administration until a new tutor is appointed. — N. 419.

SECTION II.

OF SUBROGATE-TUTORS.

267. In every tutorship there must be a subrogate-tutor, whose appointment is made by the same act, and in the same manner, and is subject to the same revision as that of the tutor. His duties consist in causing the act of tutorship to be registered, being present at the inventory, watching over the administration of the tutor, causing his removal if there be ground for it, and in acting for the interests of the minor whenever they are opposed to those of the tutor. — N. 420, 422. — C. 286, 292, 293, 309, 1331, 1332, 2118. — P. 1331, 1337, 1342, 1351.

268. The subrogate-tutor does not of right replace the tutor, when the tutorship becomes vacant, or when the tutor becomes incapable of acting by absence or any other cause, but in these cases it is his duty to have a new tutor appointed, and in default of so doing, he is liable to pay the damages which may result to the minor from his neglect. — N. 424. — C. 250.

269. If during the tutorship a minor happen to have any interests to discuss judicially with his tutor, he is

for such case given a tutor *ad hoc* whose powers extend only to the matters to be so discussed. — P. 1331, 1355.

270. The functions of a subrogate-tutor cease in the same manner as those of a tutor. — N. 425.

271. The provisions contained in sections three and four of the present chapter, apply to subrogate-tutors. — N. 426.

SECTION III.

OF THE CAUSES WHICH EXEMPT FROM TUTORSHIP.

272. No one is bound to accept a tutorship, unless he has been called to the family council which elected him.

273. He who is neither related nor allied to the minor cannot be compelled to accept the tutorship, if any one who is related or allied be in a position to take charge of it. — N. 432.

274. Any person of the age of seventy years complete may refuse to be appointed tutor. He who has been appointed before he was of that age, may be discharged when he has attained it. — N. 433.

275. Persons laboring under serious and habitual infirmity are exempt from being tutors; they may even obtain their discharge if such infirmity supervene after their appointment. — N. 434.

276. [Two] tutorships are, for any person, a sufficient reason for refusing to accept a third, other than that of his children. A husband or father, who is already charged with one tutorship, is not bound to accept a second, unless it is that of his own children. — N. 435.

277. Those who have five legitimate children are exempted from any tutorship but that of their own children. Children who have died leaving issue still living, are counted in this number. — N. 436.

278. The birth of children during tutorship does not authorize its abandonment. — N. 437.

279. If the person who has been elected by a family council be present, he is bound, under pain of forfeiting his grounds of exemption, to state them, in order that their validity may be determined at once, when the proceeding takes place before a court, judge or prothonotary, or in order that they may be reported to the court, judge or prothonotary by the notary or person delegated, if it be before either of these that the family council has been called. — N. 438. — C. 261.

280. If the person elected be not present, a copy of the act of election is served upon him, and he is bound, within five days, and under pain of forfeiting his grounds of exemption, to lodge them in the office of the court before which, or before the judge

or prothonotary of which the proceedings were had, or in the hands of the notary or party delegated, if it be before either of these that the family council was called, in order that the matter may be dealt with in conformity with the preceding article.— N. 439.

281. The decision given as to the validity of such grounds by the judge or the prothonotary, out of court, is subject to revision by the court, whose judgment may also be appealed from; but during the litigation, the person elected is obliged to administer provisionally; and all his acts of administration are valid, even if he be afterwards discharged from the tutorship. — N. 440. — P. 52 § 2, 594 § 6, 1310.

SECTION IV.

OF INCAPACITY, EXCLUSION AND REMOVAL FROM TUTORSHIP.

282. The following persons cannot be tutors:

1. Minors, except the father, who is bound to accept the office, and the mother, who although a minor, has a right to the tutorship of her children, but is not bound to accept it;

2. Interdicted persons;

3. Women, other than the mother and female ascendants, who are entitled, during their widowhood and in the case provided for in the last paragraph of article 264, to the tutorship of their children and grandchildren, but are not bound to accept it;

4. All those who themselves or whose father and mother have against the minor a suit at law involving his status, his fortune, or an important portion of it. — N. 442. — C. 365.

283. Mothers and grandmothers who have been appointed to a tutorship during their widowhood, are deprived of it from the day on which they contract a second marriage; and if the minors have not been provided with another tutor prior to such marriage, the husbands of such mothers or grandmothers remain responsible for the administration of the property of the minors during the second marriage, even if there be no community. — C. 264.

284. Condemnation to an infamous punishment carries with it by law exclusion from tutorship; it also entails removal from a tutorship previously conferred.— N. 433. — C. 36.

285. The following persons are also excluded from tutorship, and even may be deprived of it when they have entered upon its duties:

1. Persons whose misconduct is notorious;

2. Those whose administration exhibits their incapacity or dishonesty. — N. 444.

286. Actions for the removal of tutors may be brought before the court, by any one related or allied to the minor, by the subrogate-tutor, or by any other person having an interest in such removal. — N. 446, 448.

287. The removal of a tutor can only be ordered upon the advice of a family council, which is composed in the same way as for his appointment, and is called in such manner as the court directs.

288. The judgment of removal must contain the grounds on which it is founded, and order the rendering of an account and the appointment of a new tutor, who is appointed with the usual formalities so soon as the judgment becomes executable either by acquiescence, by want of appeal in due time, or by its being confirmed in appeal.—N. 447.

289. During the litigation, the tutor sued retains the management and administration of the person and of the property of the minor, unless the court orders otherwise.

SECTION V.

OF THE ADMINISTRATION OF TUTORS.

290. A tutor has the care of the person of his pupil, and represents him in all civil acts.

He is bound to manage his property like a prudent administrator, and is liable for the damages which may result from bad management.

He can neither buy the property of his pupil, nor take it on lease, nor accept the transfer of any right or any debt against his pupil. — N. 450. — C. 83, 1054, 1484. — P. 1385.[1]

290*a*. The tutor may, with the authorization of the judge, upon the advice of the family council, in the case of an established business, continue the same.

Such power may be revoked at any time by order of the court, judge or prothonotary upon the advice of the family council. — 4 Ed. VII, c. 41.

291. A tutor as soon as his appointment is known to him, and before acting under it, must make oath to well and truly administer the tutorship. — C. 256, 265.

292. As soon as he has taken the oath, the tutor demands the removal of seals, if they have been affixed, and proceeds forthwith to the taking of an inventory of the property of the minor, in presence of the subrogate-tutor.

If anything be due to him by the minor, the tutor must declare it in the inventory, on pain of forfeiting his claim. — N. 451. — C. 267. — P. 1379 et s. 1387 et s.

293. Within the month which follows the closing of the inventory, the tutor causes all the moveable effects, except those which he

is allowed or bound to keep in kind, to be sold by public auction, in presence of the subrogate-tutor, and after due publications, which must be mentioned in the minute of sale. — N. 452. — P. 1404.

294. Within the six months which follow such sale, the tutor, after discharging the debts and other liabilities, must invest whatever money remains in his hands, whether it proceeds from the sale, or is found upon making the inventory, or is subsequently received from the debtors of the minor. — C. 981o et s.

295. During the tutorship, he must likewise invest the excess of the revenues over the expenses, as well as all capital sums which have been reimbursed and all other moneys which he has received, or ought to have received; and this he must do within the same delay of six months from the day when he had or ought to have had a sufficient sum, considering the means and condition of the minor, to form a suitable investment.

296. In default of the tutor having made, within the delays, the investment required, he is bound to account to his pupil for interest on the sums which he ought to have so invested, unless he can establish that such investment was impossible, or unless, on his application, the judge or the prothonotary, upon the advice of a family council, has dispensed with the investment or prolonged the delays. — C. 1078 § 3.

297. Without the authorization of the judge, or the prothonotary, granted on the advice of a family council, the tutor is not allowed to borrow for the minor, nor to alienate or hypothecate his immoveable property; nor is he allowed to make over or transfer any capital sums belonging to the minor, or his shares and interest in any financial, commercial, or manufacturing joint-stock company. — N. 457. — C. 1009 et s. — P. 1341 et s.

298. Such authorization can only be granted in cases of necessity or for an evident advantage.

In the case of necessity, the judge or prothonotary grants his authorization only when it is established by a summary account submitted by the tutor, that the moneys, moveable effects and revenues of the minor are insufficient.

In all cases, the authorization indicates what property is to be sold or hypothecated, and any conditions deemed expedient. — C. 351a, 351b. — P. 1348.

299. Repealed by 60 V., c. 50, s. 13. Vide P. 1351, 1353.

300. The formalities required by articles 298 and 299 for the alienation of the property of a minor, do not apply to cases where a judgment, on the demand of a co-proprietor, has ordered

the licitation of undivided property. But in these cases, the licitation can only be made in the form prescribed by law. Strangers are admitted to bid. — N. 460. — C. 709.

301. [A tutor cannot accept or renounce a succession, which falls to his pupil, without authorization being granted on the advice of a family council. The acceptance can only be made under benefit of inventory. Accompanied by these formalities the acceptance or renunciation has the same effect as if made by a person of age.] — N. 461. — C. 643, 660 et s., 867. — P. 1405 et s.

302. [In any case where a succession renounced in the name of a minor has not been accepted by any one else, it may be afterwards accepted either by the tutor duly authorized on the advice of a family council consulted anew, or by the minor become of age; but it is so taken in the state in which it is then, and the sales or other acts legally made during the vacancy cannot be questioned.] — N. 462. — C. 657.

303. Gifts made to a minor may be accepted by his tutor, or a tutor *ad hoc*, or by his father, mother, or other ascendants; such acceptance being valid without the advice of any family council. — N. 463. — C. 789, 792.

304. Actions belonging to a minor are brought in the name of his tutor.

Nevertheless, a minor of fourteen years of age may bring alone actions to recover his wages.

He may also with the authority of a judge, bring alone all other actions arising from the contract for the hire of his personal services.—R. S. Q., 5789; 51-52 V., c. 22. — N. 454. — P. 78, 1263.

305. A tutor cannot demand the definitive partition of the immoveable property of the minor, but he can, even without authorization, defend an action of partition brought against such minor. — N. 465. — C. 691.

306. A tutor cannot appeal from a judgment until he is authorized by the judge, or the prothonotary, on the advice of a family council.

307. A tutor cannot transact in the name of the minor unless he is authorized by the court, the judge or the prothonotary, on the advice of a family council. Accompanied by these formalities, transaction has the same effect as if made with a person of age. — N. 467. — C. 1919. — P. 1432.

SECTION VI.

OF THE ACCOUNT OF TUTORSHIP.

308. Every tutor is accountable for his administra-

tion, when it has terminated. — N. 469.

309. Any tutor may be compelled, even during the tutorship, on the demand of any one related or allied to the minor, of the subrogate-tutor, or of any other parties interested, to produce from time to time, a summary account of his administration; such account to be furnished without any judicial formality or costs. — N. 470.

310. The definitive account of a tutorship is rendered at the cost of the minor, when he has attained his majority, or has been emancipated; the tutor advances the costs of such account.

He is allowed all the expenses which he can justify, and of which the object was useful. — N. 471. — C. 318. — P. 570.

311. Every settlement between a minor become of age and his tutor, relating to the administration and account of the latter, is null, unless it is preceded by a detailed account, and the delivery of vouchers in support thereof. — N. 472. — C. 767.

312. If the account give rise to contestations, they are proceeded with and adjudicated upon in the manner provided in the Code of Civil Procedure.—N. 473. — P. 566 et s.

313. Any balance due by the tutor bears interest without demand, from the closing of the account. Interest on any sum due by the minor to the tutor, only runs from the time of his being put in default by the tutor, after the closing of the account. — N. 474. — P. 833 § 1.

CHAPTER THIRD.

OF EMANCIPATION.

314. Every minor is, of right, emancipated by marriage. — N. 476. — C. 182.

315. An unmarried minor may, at his own request, or that of his tutor, or of any one related or allied to him, be emancipated by any court, judge or prothonotary having jurisdiction to confer tutorship, on the advice of a family council called and consulted as in the case of tutorship.—N. 478.—C. 250 et s. — P. 1331 et s.

316. If the emancipation be granted out of court, it is subject to revision, and may be annulled by the court to which the judge or prothonotary who pronounced it belongs. From this judgment an appeal lies. — P. 52 § 2, 1310.

317. Whether emancipation results from marriage or is granted judicially, a curator must be appointed to the emancipated minor. — C. 338 et s. — P. 594 § 6.

318. The account of the tutorship is rendered to an emancipated minor, with the assistance of his curator. — N. 480.

319. An emancipated minor

may grant leases for terms not exceeding nine years; he may receive his revenues, give receipts therefor, and perform all acts of mere administration.

[He is not relievable from these acts, except in cases where persons of age would be so.] — N. 481. — C. 83, 182, 244, 247, 763, 907, 1002, 1707.

320. He can neither bring nor defend a real action without the assistance of his curator. — N. 482. — P. 78.

321. An emancipated minor cannot borrow without the assistance of his curator. Loans of large amounts considering his means, when effected by deeds bearing hypothec, are null, although made with the assistance of his curator, if they be not authorized by the judge or prothonotary, on the advice of a family council; with the exception of the cases provided for in article 1005. — N. 483.

322. Moreover, he can neither sell nor alienate his immoveable property, nor perform any acts other than those of mere administration, without observing the formalities prescribed for unemancipated minors.

With respect to any obligations which he may have contracted by purchase or otherwise, they may be reduced if excessive; the courts taking into consideration the fortune of the minor, the good or bad faith of the persons who have contracted with him, and the utility or inutility of the expenditure. — N. 484. — C. 1341.

323. A minor engaged in trade is reputed of full age for all acts relating to such trade. — N. 487. — C. 1005.

TITLE TENTH.

OF MAJORITY, INTERDICTION, CURATORSHIP AND JUDICIAL ADVISERS.

CHAPTER FIRST.

OF MAJORITY.

324. Majority is fixed at the complete age of twenty-one years. At that age persons are capable of performing all civil acts. — N. 488. — C. 246.

CHAPTER SECOND.

OF INTERDICTION.

325. A person of full age, or an emancipated minor, who is in an habitual state of imbecility, insanity or madness, must be interdicted, even though he has lucid intervals. — N. 489. — C. 142.

326. Persons who commit acts of prodigality, which give reason to fear that they will dissipate the whole of their property, are also to be interdicted.

327. Every person has the right to demand the interdiction of any one related or allied to him, who is prodigal, mad, imbecile, or insane. Husband or wife, likewise, may demand the interdiction the one of the other. — N. 490.

328. The demand for interdiction must be made before the proper court, or before one of the judges or the prothonotary of such court; it must contain a specification of the acts of imbecility, insanity, madness or prodigality. The applicant is obliged to prove these acts. — N. 492, 493.

329. The court, judge or prothonotary before whom the demand is made, orders a family council to be called, as in the case of tutorship, and takes its advice as to the state of the person whose interdiction is sought; but he who makes the demand cannot form part of the family council. — N. 494, 495.— C. 250 et s. — P. 1331 et s.

330. When the demand is made on account of imbecility, insanity or madness, the defendant must be interrogated by the judge attended by a clerk or assistant, or by the prothonotary; the examination is taken down in in writing, and communicated to the family council.

These interrogatories are not required if the interdiction be sought on account of prodigality; but in this case, the defendant must be heard or have been summoned to appear. — C. N. 496. [1]

330*a*. When the demand is made on account of imbecility, insanity or madness, and the defendant is confined in an asylum for the insane, he is not interrogated, but a certificate establishing his mental condition given by the medical superintendent of the asylum is produced. 63 V., c. 39.

331. If the demand for interdiction be rejected, the court may, if circumstances require it, appoint a judicial adviser to the defendant. — N. 499. — C. 349 et s.

332. If the interdiction be pronounced out of court, it is subject to revision by the court, on petition of the person interdicted or any of his relations. The judgment of the court is also subject to appeal. — P. 52, § 2, 1310.

333. Every sentence or judgment of interdiction or for the appointment of an adviser is, at the instance of the applicant, notified to the defendant, and inscribed without delay by the protho-

[1] *Vide* R. S. Q. 5503 as to the sale of intoxicating liquors to habitual drunkards.

notary or clerk on the roll kept for that purpose, and publicly exposed in the office of each of the courts having power to interdict in the district. — N. 501. — C. 241 et s.

334. Interdiction or the appointment of an adviser takes effect from the day of the judgment, notwithstanding the appeal.

All acts done subsequently by the person interdicted for imbecility, madness or insanity are null; the acts done by any one to whom an adviser has been given, without the assistance of such adviser are null, if injurious to him, in the same manner as those of minors and of persons interdicted for prodigality, according to article 987. — N. 502. — C. 282 § 2, 343, 789, 792, 834, 986, 1010, 1011. — 594 § 6.

335. Acts anterior to interdiction for imbecility, insanity or madness may nevertheless be set aside, if the cause of such interdiction notoriously existed at the time when these acts were done. — N. 503. — C. 986.

336. Interdiction ceases with the causes which necessitated it. Nevertheless it cannot be removed without observing the formalities prescribed for obtaining it, and the interdicted person cannot resume the exercise of his rights until after the judgment removing the interdiction. — N. 512.

CHAPTER SECOND (A).

INTERDICTION OF HABITUAL DRUNKARDS.

336*a*. May also be interdicted any habitual drunkard who squanders or mismanages his property or places his family in trouble or distress, or transacts his business prejudicially to his family, his friends or his creditors, or who uses intoxicating liquors to such an extent that he thereby incurs the danger of ruining his health or shortening his life. — R. S. Q. ~~6790~~. 3356

336*b*. The demand in interdiction is made by a petition, under oath, presented to any one of the judges of the Superior Court, who alone shall have power to act, by any relations, whether of blood or by affinity, or, in default of relations, by any friend of such habitual drunkard.

The judge may, for any of the reasons mentioned in the preceding article, set forth in the petition and established before him to his satisfaction, pronounce the interdiction of such habitual drunkard and appoint a curator to him, to manage his affairs, as in the case of one interdicted for prodigality.— — *Id.*

336*c*. Any person who, according to the common report of the neighborhood, has the reputation of being a drunkard, is considered as being an

habitual drunkard within the meaning of this chapter.—*Id.*

336*d*. The petition praying for the interdiction of any habitual drunkard is personally served upon him at a time when he is sober, or, if at the time of the said service, the person whose interdiction is demanded is not sober, the petition is served upon a reasonable person of his family, at least eight days before that fixed for the appearance before the judge for the purpose of the interdiction. — *Id.*

336*e*. The interdiction is proceeded with, by summoning before such judge a family council as in the case of tutorships, under the provisions of this Code, and by taking the opinion, under oath, of each person composing the family council, as to the truth of the fact of such person being an habitual drunkard and as to the necessity of such interdiction; but the person making such demand in interdiction cannot form part of such family council. — *Id.* C. 250 et s.

336*f*. The person, whose interdiction is thus demanded, may produce before the judge witnesses to contradict the allegations of the petition and the evidence of any of the members of the family council; and each party may retain an advocate to conduct the proceedings on his behalf and to examine the witnesses before the judge, who may require, from the person instituting the demand in interdiction, further evidence of the facts alleged in the petition, in addition to that of the family council. — *Id.* — R. S. Q. 5790.

336*g*. In proceeding to the interdiction, the proof is taken orally or in writing, in the discretion of the judge; and it is not necessary that the person, whom it is sought to interdict, be interrogated before the judge. — *Id.*

336*h*. The decision of the judge is final and without appeal, whether he grants the interdiction or rejects the demand therefor. — *Id.*

336*i*. The judgment ordering the interdiction may also order, if it have been prayed for, that the person interdicted be confined in an establishment for habitual drunkards, for such space of time as may be deemed necessary. — *Id.*

336*j*. Such order may, if not then obtained, be applied for and obtained subsequently upon sufficient proof, upon petition presented to one of the judges of the Superior Court in the district in which the interdicted person has his domicile, by observing the formalities prescribed in articles 336*d*, 336*e*, 336*f*, and 336*g*. — *Id.*

336*k*. The judgment must mention the name of the establishment in which the person is to be confined, the duration of the confinement, the name or names of the

persons who are to carry out the order, a certified copy whereof is given to the director of the establishment at the same time as the person is confided to his care. — *Id.*

336*l*. The order for confinement may be suspended or cancelled at any time by one of the judges of the Superior Court, upon summary petition accompanied by sufficient proof that the person may, in his own interest and in that of his family, be released. — *Id.*

336*m*. If any demand in interdiction under this chapter be rejected, the same shall not be renewed before the expiration of three months. — *Id.*

336*n*. Any person interdicted as an habitual drunkard may be relieved from such interdiction, after one year's sober habits, and the removal thereof is effected by observing the same formalities as those prescribed to obtain the interdiction, and the person interdicted cannot regain the exercise of his civil rights, until after the judgment removing the judgment removing the ininterdiction.

336*o*. The wife, or the son of full age, of any person so interdicted, may be appointed his curator.

When the wife of the person interdicted has been appointed, she has all the powers of curators to persons interdicted for prodigality, and is subject to the provisions of article 180 of this Code, save in so far as regards acts of simple administration, and for such acts her appointment as curatrix avails as full authorization. — *Id.* — C. 342, 343.

336*p*. Proceedings under this chapter are summary.— R. S. Q. 5790.

336*q*. The name of every person interdicted under this chapter must be inscribed on the roll of interdicted persons, as in other cases of interdiction.—*Id.*—C. 333

CHAPTER SECOND (B).

336*r*. May also be interdicted any person who makes use of opium, morphine, or other narcotics, and who squanders or mismanages his property, or places his family in trouble or distress, or transacts his business prejudicially to his family, relatives or creditors, or incurs the danger of ruining his health or shortening his life. — 59 V., c. 40, s. 1.

336*s*. The formalities prescribed by articles 336 , and 336*d* to 336*q*, inclusively, are observed with reference to obtaining the interdiction, the confinement of the interdicted person and the relief from interdiction, in so far as they may apply thereto.— 59 V., c. 40, s. 1.

SCHEDULES.

A

FORM OF PETITION FOR INTERDICTION.

Province of Quebec,
District of .

To the Honorable A. B., one of the judges of the Superior Court for the Province of Quebec:

C. D., of the parish of.... in the said district, *farmer*, by this his petition, respectfully represents:

That, for about.... year , E. F., of the said parish of..... *farmer*, (uncle or brother of the petitioner, *as the case may be*), has been an habitual drunkard, and that by reason of his drunkenness he squanders *or* mismanages his property, *or* places his family in trouble or distress, *or* transacts his business prejudicially to his family, his relations, *or* his creditors, and that, therefore, it is desirable that in virtue of the law, the said E. F., be interdicted as an habitual drunkard.

Wherefore, your petitioner prays that the interdiction of the said E. F., as an habitual drunkard, be pronounced in accordance with the law.— *Id.*

B

FORM OF AFFIDAVIT WHICH MUST ACCOMPANY THE PETITION PRAYING FOR THE INTERDICTION.

C. D., the petitioner named in the foregoing petition, being duly sworn upon the Holy Evangelists, doth depose and say: That the facts alleged in the foregoing petition are true and that the said petition hath not been made through malice, nor with a view to oppress. And he hath (*declared himself to be unable to sign*), or (*hath signed*), after the same hath been duly read to him.

Sworn before me, at this
19
J. S. C.

— *Id.*

C

JUDGE'S ORDER, CONVENING A FAMILY COUNCIL TO PROCEED TO THE INTERDICTION.

Considering the foregoing petition and affidavit, let the relations, whether of blood or by affinity, and in default of such relations, the friends of the said E. F., in the said petition mentioned, appear before me in chambers, in the court house, in the *city or town*, etc., on the..... day of....., 19...., at.... o'clock in the.....noon, for the purpose of proceeding upon the said petition.

19
J. S. C.

— *Id.*

CHAPTER THIRD.

OF CURATORSHIP.

337. There are two sorts of curatorship, one to the per-

son, the other to the property.

338. The persons to whom curators are given are:

1. Emancipated minors;

2. Interdicted persons;

3. Children conceived but not yet born.

339. With the exception of curators to habitual drunkards, curators to the person are appointed with the formalities and according to the rules prescribed for the appointment of tutors.

[Curators to the person are sworn before entering upon their duties. — R. S. Q. 5791. — C. 250 et s. — P. 1331 et s. — 60 V., c. 50, s. 14.

340. A curator to an emancipated minor has no control over his person; he is given in order to assist him in matters and proceedings in which he cannot act alone. This curatorship ends with the minority. — C. 317 et s.

341. A curator to an interdicted person is appointed by the judgment which pronounces the interdiction.

342. The husband, unless there are valid reasons to the contrary, must be appointed curator to his interdicted wife.

The wife may be curatrix to her husband. — C. 336o.

343. The curator to a person interdicted for imbecility, insanity or madness has over such person and his property all the powers of a tutor over the person and property of a minor; and he is bound towards him in the same manner as the tutor is towards his pupil.

These powers and obligations extend only to the property when the interdiction is for prodigality or habitual drunkenness. — R. S. Q., 5792. — C. 83, 334.

344. [No one, with the exception of husband and wife, and ascendants and descendants, is obliged to retain the curatorship of an interdicted person for more than ten years; at the expiration of that time, the curator may demand and has a right to be replaced.] — N. 508.

345. The curator to a child conceived but not yet born, is bound to act for such child whenever its interests require it; he has until its birth the administration of the property which is to belong to it, and afterwards he is bound to render an account of such administration. — N. 393.

346. If during the curatorship, the party subjected to it have any interests to discuss with his curator, such party is given, for that case, a curator *ad hoc*, whose powers only extend to the matters to be discussed.

347. Curators to property are those appointed:

1. To the property of absentees;

2. In cases of substitution;

3. To vacant estates;

4. To the property of extinct corporations;

5. To property abandoned by insolvent traders who have made an abandonment

of their property for the benefit of their creditors, or by arrested or imprisoned debtors, or on account of hypothecs;

6. To property accepted under benefit of inventory. —R. S. Q. 5793.—C. 87 et s., 372, 373, 685 et s., 945.—P. 581, 867 et s., 1338 et s., 1410, 1426 et s.

347*a*. Curators to property must be sworn before entering upon their duties. — 60 V., c. 50, s. 15.

348. The provisions relating to curators to the property of absentees are contained in the title *Of Absentees*. Those concerning curators to the property of extinct corporations, in the title *Of Corporations*. In the third book and in the Code of Civil Procedure are to be found the rules touching the appointment, powers and duties of the other curators mentioned in the preceding article, who must also be sworn.

CHAPTER FOURTH.

OF JUDICIAL ADVISERS.

349. A judicial adviser is given to those who, without being absolutely insane or prodigal, are nevertheless of weak intellect, or so inclined to prodigality as to give reason to fear that they will dissipate their property or seriously impair their fortune. — N. 513, 514.

350. Judicial advisers are given by those who have power to interdict, on the demand of any person who has a right to demand interdiction, and with the same formalities. Such demand may also be made by the party himself. — N. 514. — P. 1331, 1337.

351. If the powers of the judicial adviser be not defined by the judgment, the person to whom he is appointed is prohibited from pleading, transacting, borrowing, receiving moveable capital and giving a discharge therefor, as also from alienating or hypothecating his property without the assistance of such adviser.

The prohibition can only be removed in the same manner that the appointment has been made. — N. 513. — C. 789, 834. — P. 78.

CHAPTER FOURTH (A).

SALE OF CERTAIN PROPERTY BELONGING TO MINORS AND OTHER INCAPABLE PERSONS.

351*a*. In the case of the sale of capital sums, such as shares or interest in financial, commercial or manufacturing joint stock companies, or public securities, belonging to minors, interdicted persons or absentees or to substitutions, the judge or the court, authorizing such sale upon the advice of a family council, may, if he or it deem it meet, order that the sale be made, at the current rate upon the stock exchange, by a broker or other

person appointed for that purpose, without advertisement or other formalities; and the judge or court in case he or it may deem the same advisable, may authorize, during such delay as shall be determined, the gradual disposal of such securities at the current rate upon the stock exchange.

The person appointed shall make a report of all sales by him made, and deposit it in the clerk's office where the authorization for the sale has been deposited, with an attestation under oath, showing the market value of similar securities sold upon the stock exchange on the day of each sale. — R. S. Q. 5794.—C. 297, 298.—P. 1356.

351*b*. Articles 298 and 299 of this Code, and the fifth title of the third part of the Code of Civil Procedure, do not apply to the sale of immoveable property or immoveable rights, belonging to minors or persons incapable of acting for themselves, nor to the sales of the capital sums, shares or interest of such minors or persons, in any financial, commercial or manufacturing joint stock company, the real value of which does not exceed the sum of four hundred dollars.

The sale may take place in the manner set forth in article 6016 of the Revised Statutes of Quebec. — *Id.* — P. 1357.

TITLE ELEVENTH.

OF CORPORATIONS.

CHAPTER FIRST.

OF THE NATURE AND CREATION OF CORPORATIONS, AND OF THEIR DIFFERENT KINDS.

352. Every corporation legally constituted is an artificial or ideal person, whose existence and succession are perpetual, or sometimes for a fixed period only, and which is capable of enjoying certain rights and liable to certain obligations.

353. Corporations are constituted by act of parliament, by royal charter or by prescription.

Those corporations also are reputed to be legally constituted which existed at the time of the cession of the country and which have been since continued and recognized by competent authority.—C. 1889.

354. Corporations are aggregate or sole.

Corporations aggregate are those composed of several members; corporations sole are those consisting of a single individual.

355. Corporations are either ecclesiastical or religious, or they are lay or secular.

Ecclesiastical corporations are aggregate or sole. They are all public.

Secular corporations are either aggregate or sole. They are either public or private.

356. Secular corporations are further divided into political and civil; those that are political are governed by the public law, and only fall within the control of the civil law in their relations, in certain respects, to individual members of society.

Civil corporations constituting, by the fact of their incorporation, ideal or artificial persons, are as such governed by the laws affecting individuals; saving the privileges they enjoy and the disabilities they are subjected to.

CHAPTER SECOND.

OF THE RIGHTS, PRIVILEGES, AND DISABILITIES OF CORPORATIONS.

SECTION I.

OF THE RIGHTS OF CORPORATIONS.

357. Every corporation has a corporate name, which is given to it at its creation or which has since been recognized and approved by competent authority.

Under such name the corporation is known and designated, sues and is sued, and does all its acts and exercises all the rights which belong to it. — P. 81.

358. The rights which a corporation may exercise, besides those specially conferred by its title, or by the general laws applicable to its particular kind, are all those which are necessary to attain the object of its creation; thus it may acquire, alienate and possess property, sue and be sued, contract, incur obligations, and bind others in its favor. — C. 481.

359. For these objects, every corporation has the right to select from its members, officers whose number and denominations are determined by the instrument of its creation or by its by-laws or regulations.

360. These officers represent the corporation in all acts, contracts or suits, and bind it in all matters which do not exceed the limits of the powers conferred on them. These powers are either determined by law, by the by-laws of the corporation, or by the nature of the duties imposed.

361. Every corporation has a right to make, for its internal government, for the order of its proceedings and for the management of its

affairs, by-laws and regulations which its members are bound to obey, provided they are legally and regularly passed.

SECTION II.

OF THE PRIVILEGES OF CORPORATIONS.

362. Besides the special privileges which may be granted to each corporation by its title of creation or by special law, there are others which result from the fact of incorporation and which exist of right in favor of all corporate bodies, unless taken away, restrained or modified by such title or by law.

363. The principal of these privileges is that which limits the responsibility of the members of a corporation to the interest which each possesses therein, and exempts them from all personal liability for the payment of obligations contracted by the corporation within the scope of its powers and with the formalities required.

SECTION III.

OF THE DISABILITIES OF CORPORATIONS.

364. Corporations are subject to particular disabilities which either prevent or restrain them from exercising certain rights, powers, privileges and functions, which natural persons may enjoy and exercise; these disabilities arise either from their corporate character or they are imposed by law.

365. In consequence of the disabilities which arise from their corporate character, they can neither be tutors nor curators, nor can they take part in meetings of family councils. [1]

They cannot be entrusted with the execution of wills or any other administration which necessitates the taking of an oath, or imposes personal responsibility.

They cannot be summoned personally, nor appear in court otherwise than by attorney.

They cannot sue nor be sued for assaults, battery or other violence to the person.

They cannot serve as witnesses nor as jurors before the courts.

They can neither be guardians nor judicial sequestrators, nor can they be charged with any other functions or duties the exercise of which might entail imprisonment.— R. S. Q. 5795. — C. 908.

366. The disabilities arising from the law are:

1. Those which are imposed on each corporation by its title, or by any law applicable to the class to which such corporation belongs;

2. Those comprised in the general laws of the country respecting mortmains and bodies corporate, prohibiting them from acquiring immoveable property or property so reputed, without the permission of the crown, ex-

cept for certain purposes only, and to a fixed amount and value;

3. Those which result from the same general laws imposing, for the alienation or hypothecation of immoveable property held in mortmain or belonging to corporate bodies, particular formalities, not required by the common law. — C. 763, 789, 836.

366*a*. All corporations which, under the provisions of their charters or of the law, cannot acquire real estate except to a limited amount, have the right, whenever they dispose of or alienate any real estate belonging to them, to apply the price thereof to the acquisition of other real estate, and also to receive the revenues thereof and to employ the same for the objects for which they were constituted. — R. S. Q., 5796.

367. All corporations are prohibited from carrying on the business of banking unless they have been specially authorized to do so by their title of creation. — C. 1888.

CHAPTER THIRD.

OF THE DISSOLUTION OF CORPORATIONS AND THE LIQUIDATION OF THEIR AFFAIRS.

SECTION I.

OF THE DISSOLUTION OF CORPORATIONS.

368. Corporations are dissolved:

1. By any act of the legislature declaring their dissolution;

2. By the expiration of the term of the accomplishment of the object for which they were formed, or the happening of the condition attached to their creation;

3. By forfeiture legally incurred;

4. By the natural death of all the members, the diminution of their number, or by any other cause of a nature to interrupt the corporate existence, when the right of succession is not provided for in such cases;

5. By the mutual consent of all the members, subject to the modifications and under the cir cumstances hereinafter determined;

6. By voluntary liquidation in the cases by law provided. — R. S. Q. 5797. — C. 1892. — P. 985.

369. Ecclesiastical and secular corporations of a public nature, other than those formed for the mutual assistance of their members, cannot be dissolved by mutual consent without a formal and legal surrender or the authority of the legislature, as the case may be.

The same rule applies to banks, to railway, canal, telegraph, toll-bridge, and turnpike companies, and generally to private corporations who have obtained privileges which are exclusive or exceed those resulting by law from incorporation.

370. Public corporations formed for the mutual assistance of their members, and those of a private nature not included in the preceding article, may be dissolved by mutual consent, on conforming to the conditions which may have been specially imposed on them, and saving the rights of third parties.

SECTION II.

OF THE LIQUIDATION OF THE AFFAIRS OF DISSOLVED CORPORATIONS.

371. Saving the case of the voluntary liquidation of joint stock companies, a dissolved corporation is, for the liquidation of its affairs, in the same position as a vacant succession. The creditors and other interested have the same recourse against the property which belonged to it, as may be exercised against vacant successions and the property belonging to them. — R. S. Q. 5798.

372. In order to facilitate such recourse, a curator, who represents such corporation and is seized of the property which belonged to it, is appointed by the proper court, with the formalities observed in the case of vacant estates. —C. 685 et s.—P. 986, 1339.

373. Such curator must be sworn; he must give security and make an inventory. He must also dispose of the moveables, and must proceed to the sale of the immoveable property, and to the distribution of the price between the creditors and others entitled to it, in the manner prescribed for the discussion, distribution and division of the property of vacant estates to which a curator has been appointed, and in the cases and with the formalities required by the Code of Civil Procedure. — C. 1426. — P. 986, 1339.

373*a*. In the case of the voluntary liquidation of a joint stock company, one or more liquidators are appointed in the manner required by law, for the purpose of winding up the affairs and of distributing the assets of the company. — R. S. Q. 5799.

373*b*. Non-commercial joint stock corporations or companies, which have ceased payment, may be placed in liquidation on the application of any unsecured creditor for a sum of at least two hundred dollars; provided that demand of payment has been made thirty days before the service of the notice mentioned in the following article. — 3 Ed. VII, c. 48.

373*c*. The application is made by petition presented to the judge of the district in which the company has its head office, after a notice of three days to the company, praying that the company be placed in liquidation and for the appointment of a provisional guardian. — *Id.*

373*d*. If the application is

not immediately contested in the manner provided for abandonment of property, the judge shall order the liquidation of the company and the appointment of a provisional guardian. — *Id.*

373*e*. The provisional guardian shall take possession of all the property of the company, as well as its books, credits and assets, and shall give notices to the creditors and shareholders ordered by the judge, calling upon them to appoint a liquidator, with the same formalities as those respecting the appointment of a curator to an abandonment of property, the notice to be given collectively to all the shareholders and creditors and not individually. — *Id.*

373*f*. The liquidator, after his appointment, shall have the management and shall dispose of the property of the company in the same manner as a curator to the property of an insolvent and with the same powers. — *Id.*

373*g*. The judge may, at his discretion, appoint one or more inspectors, from among the creditors of the company. — *Id.*

373*h*. The president, secretary, treasurer or agent of the company, or any person having the custody thereof, shall be bound, upon an order of the judge, to deliver up, to the liquidator or to the provisional guardian, all such books and documents belonging to the company which the judge shall deem requisite to the liquidation, under penalty of being guilty of contempt of court. — *Id.*

373*i*. All the provisions of the Code of Civil Procedure respecting abandonment of property, not inconsistent with articles 373*b* to 373*h*, shall apply to such liquidation. The liquidator shall be vested with all the rights of action of the insolvent company and he shall also be made a party to all actions and proceedings taken against the company. — *Id.*

373*j*. The provisions of articles 373*b* to 373*i* shall apply to the cases of liquidation under article 373*a*. — *Id.*

BOOK SECOND

OF PROPERTY, OF OWNERSHIP AND OF ITS DIFFERENT MODIFICATIONS.

TITLE FIRST.

OF THE DISTINCTION OF THINGS.

374. All property, incorporeal as well as corporeal, is moveable or immoveable. — N. 516.

CHAPTER FIRST.

OF IMMOVEABLES.

375. Property is immoveable either by its nature, or by its destination, or by reason of the object to which it is attached, or lastly by determination of law. — N. 517.

376. Lands and buildings are immoveable by their nature. — N. 518.

377. Windmills and watermills, built on piles and forming part of the building, are also immoveable by their nature when they are constructed for a permanency.— N. 519.

378. Crops uncut and fruits unplucked are also immoveable.

According as grain is cut and as fruit is plucked, they become moveable in so far as regards the portion cut or plucked. The same rule applies to trees; they are immoveable so long as they are attached to the ground by their roots and they become moveable as soon as they are felled. — N. 520.

379. Moveable things which a proprietor has placed on his real property for a permanency or which he has incorporated therewith, are immoveable by their destination so long as they remain there.

Thus, within these restrictions, the following and other like objects are immoveable:

1. Presses, boilers, stills, vats and tuns;

2. All utensils necessary for working forges, paper-mills and other manufactories.

Manure, and the straw and other substances intended for manure, are likewise immoveable by destination. — N. 523, 524.

380. Those things are considered as being attached for a permanency which are placed by the proprietor and fastened with iron and nails, imbedded in plaster, lime or cement, or which cannot be removed without breakage, or without destroying or deteriorating that part of the property to which they are attached.

Mirrors, pictures and other ornaments are considered to have been placed permanently when without them the part of the room they cover would remain incomplete or imperfect. — N. 525.

381. Rights of emphyteusis, of usufruct of immoveable things, of use and habitation, servitudes, and rights or actions which tend to obtain possession of an immoveable, are immoveable by reason of the objects to which they are attached. — N. 526.

382. All moveable property, of which the law ordains or authorizes the realization, becomes immoveable by determination of law, either absolutely or for certain purposes.

The law declares to be immoveable the capital of unredeemed constituted rents that were created before the promulgation of this code, as also all moneys produced by the redemption during their minority of constituted rents belonging to minors.

The same rule applies to all sums accruing to a minor from the sale of his immoveables during his minority, which sums remain immoveable so long as the minority lasts.

The law declares to be immoveable all sums given by ascendants to their children, in contemplation of marriage, to be used in the purchase of real estate or to remain as private property to them only or to them and to their children.—C. 1385 et .s

CHAPTER SECOND

OF MOVEABLES.

383. Property is moveable by its nature or by determination of law. — N. 527.

384. All bodies which can be moved from one place to another, either by themselves, as animals, or by extrinsic force, as inanimate things, are moveable by nature. — N. 528.

385. Boats, scows, ships, floating mills and floating baths and generally all manufactories not built on piles and not forming part of the realty, are moveable. —N. 531.

386. Materials arising from the demolition of a building, or of a wall or other fence, and those collected for the construction of a new one, are moveable so long as they are not used.

But things forming part of a building, wall or fence, and which are only temporarily separated from it, do not cease to be immoveable so long as they are destined to be placed back again. — N. 532.

387. Those immoveables are moveable by determination of law, of which the law for certain purposes authorizes the mobilization, so are all obligations and actions respecting moveable effects, including debts created or guaranteed by the province or by corporations, also all shares or interests in financial, commercial or manufacturing companies, although such companies, for the purposes of their business, should own immoveables. These immoveables are reputed to be moveable with regard to each partner, only so long as the company lasts. — N. 529. — C. 1390 et s., 1470.

388. [Constituted rents and all other perpetual or life rents, are also moveable by determination of law; saving those resulting from emphyteusis, which are immoveable.] — N. 529.

389. No ground rent, or other rent, affecting real estate, can be created for a term exceeding ninety-nine years, or the lives of three persons consecutively.

These terms having expired, the creditor of any such rent may exact the capital of it.

Such rents although created for ninety-nine years, or for the lives of three persons, are, at all times, redeemable, at the option of the debtor, in the same manner as constituted rents to which they are assimilated. — N. 530. — C. 1787 et s., 1903.

390. It is nevertheless competent for the parties to stipulate, in the title creating these rents, that they shall only be redeemed at a certain time agreed upon, which cannot exceed thirty years; every stipulation extending this term being null with regard to the excess.— N. 530.

391. All ground-rents, or other rents, affecting real estate, created heretofore, for a term exceeding ninety-nine years or the lives of three persons, are redeemable at the option of the debtor or of the possessor of the immoveable charged. — C. 2248.

392. Rents created by emphyteutic lease are not however subject to such redemption, nor those to which the creditor has only a conditional or a limited right.

393. [Where the sum for which the redemption of rents, other than life-rents, may take place is neither

fixed by law nor validly agreed upon, the rents are redeemed by the repayment of the original price in capital, or of the value in money put by the parties upon the things which formed the consideration of the rents so created. If such price or such value do not appear, the redemption is effected by the payment of a sum sufficient to produce a like rent for the future, at the legal rate of interest at the time of the redemption.]

Special provisions concerning the redemption of the rents substituted for seignorial rights, are contained in chapter forty-one of the Consolidated Statutes for Lower Canada. — N. 530.

394. [Life-rents and other temporary rents, at the termination of which no reimbursement of the capital is to take place, are not redeemable at the option of either of the parties alone.

In the twelfth title of the third book, a mode is provided for the redemption of life-rents, when it takes place forcibly under judicial proceedings.

Temporary rents, other than life-rents, and not subject to reimbursement of the capital, are estimated, in like case, in the same manner as life-rents.] — C. 1914 et s. — P. 803.

395. The word "moveables" employed alone in any law or act, does not comprise money, precious stones, debts due, books, medals, scientific, artistic or mechanical instruments, body-linen, horses, carriages, arms, grain, wines, hay and other provisions, nor stock in trade. — N. 533.

396. The word "furniture" comprises only the moveables which are destined to furnish and ornament apartments, such as tapestry, beds, seats, mirrors, clocks, tables, china and other objects of a like kind.

It also comprises pictures and statues, but not collections of pictures which are in galleries or particular rooms.

As regards china, likewise, only that which forms part of the decoration of a room comes under the denomination of furniture. — N. 534.

397. The expressions "moveable property," and "moveable things" comprise generally whatever is reputed moveable according to the rules above established.

In the sale or the gift of a "furnished house" the word "furnished" comprises no

[1] *Vide* R. S. Q. 5505 et s. relating to constituted rents replacing seignorial rights. Article 5610 et s. of the R. S. Q. govern the sale, and transfer of constituted rents, 5720 et s. R. S. Q. govern the seizure and sale of same by the sheriff. The statut 58 V., c. 45 amended by 59 V., c. 38, provides for the redemption of the constituted rents on lands in the Magdalen islands.

other moveables than furniture. — N. 535.

398. The sale or gift of a house with all that it contains, does not comprise ready money, nor debts due or other rights the titles to which happen to be in the house. It comprises all other moveable effects. — N. 536.

CHAPTER THIRD.

OF PROPERTY IN ITS RELATIONS WITH THOSE TO WHOM IT BELONGS OR WHO POSSESS IT.

399. Property belongs either to the crown, or to municipalities or other corporations, or to individuals.

That of the first kind is governed by public or administrative law.

That of the second is subject, in certain respects as to its administration, its acquisition and its alienation, to certain rules and formalities which are peculiar to it.

As to individuals, they have the free disposal of the things belonging to them, under the modifications established by law. — N. 537.

400. Roads and public ways maintained by the state, navigable and floatable rivers and streams and their banks, the sea-shore, lands reclaimed from the sea, ports, harbors and road-steads and generally all those portions of territory which do not constitute private property, are considered as being dependencies of the crown domain. — N. 538. — C. 421, 424, 427, 589, 2213.

401. All estates which are vacant or without an owner, and those of persons who die without representatives or whose succession is abandoned, belong to the crown. — N. 539. — C. 584, 606, 637, 2216.

402. The gates, walls, ditches and ramparts of military places and of fortresses also belong to the crown. — N. 540.

403. The same rule applies to the lands, fortifications and ramparts of places which are no longer used for military purposes; they belong to the crown, if they have not been validly alienated. — N. 541.

404. The property of municipalities and other corporations is that to which or to the use of which these bodies have an acquired right. — N. 542.

405. A person may have on property either a right of ownership, or a simple right of enjoyment, or a servitude to exercise. — N. 543.

TITLE SECOND.

OF OWNERSHIP.

406. Ownership is the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations. — N. 544.

407. No one can be compelled to give up his property, except for public utility and in consideration of a just indemnity previously paid.—N. 545.—C. 1589 et s.

408. Ownership in a thing whether moveable or immoveable gives the right to all it produces, and to all that is joined to it as an accessory,whether naturally or artificially. This right is called the right of accession. — N. 546.

CHAPTER FIRST.

OF THE RIGHT OF ACCESSION OVER WHAT IS PRODUCED BY A THING.

409. The natural and industrial fruits of the earth, civil fruits, and the increase of animals, belong to the proprietor by right of accession. — C. 448 et s.

410. The fruits produced by a thing, only belong to the proprietor subject to the obligation of restoring the cost of the ploughing, tilling and sowing done by third persons. — N. 548. — C. 450, 2010.

411. A mere possessor only acquires the fruits in the case of his possession being in good faith; otherwise he is obliged to give the produce as well as the thing itself to the proprietor who claims it.

A possessor in good faith is not bound to set off the fruits against improvements for which he has a right to be reimbursed. — N. 549. — C. 107, 417.

412. A possessor is in good faith when he possesses in virtue of a title the defects of which as well as the happening of the resolutory cause which puts an end to it are unknown to him. Such good faith ceases only from the moment that these defects or the resolutory cause are made known to him by proceedings at law. — N. 550. — C. 2202.

CHAPTER SECOND.

OF THE RIGHT OF ACCESSION OVER WHAT BECOMES UNITED AND INCORPORATED WITH A THING.

413. Whatever becomes united to or incorporated

with a thing belongs to the proprietor, according to the rules hereinafter established. — N. 551.

SECTION I.

OF THE RIGHT OF ACCESSION IN RELATION TO IMMOVEABLE PROPERTY.

414. Ownership of the soil carries with it ownership of what is above and what is below it.

The proprietor may make upon the soil any plantations or buildings he thinks proper, saving the exceptions established in the title *Of Real Servitudes.*

He may make below it any buildings or excavations he thinks proper, and draw from such excavations any products they may yield, saving the modifications resulting from the laws and regulations relating to mines, and the laws and regulations of police. — N. 552.

415. All buildings, plantations and works on any land or underground, are presumed to have been made by the proprietor at his own cost, and to belong to him, unless the contrary is proved; without prejudice to any right of property, either in a cellar under the building of another or in any other part of such building, which a third party may have acquired or may acquire by prescription. — N. 553.

416. The proprietor of the soil who has constructed buildings or works with materials which do not belong to him, must pay the value thereof; he may also be condemned to pay damages, if there be any, but the proprietor of the materials has no right to take them away. — N. 554.

417. When improvements have been made by a possessor with his own materials, the right of the proprietor to such improvements depends on their nature and the good or bad faith of such possessor.

If they were necessary, the proprietor of the land cannot have them taken away; he must, in all cases, pay what they cost, even when they no longer exist; saving, in the case of bad faith, the compensation of rents, issues and profits.

If they were not necessary, and were made by a possessor in good faith, the proprietor is obliged to keep them, if they still exist, and to pay either the amount they cost or that to the extent of which the value of the land has been augmented.

If, on the contrary, the possessor were in bad faith, the proprietor has the option either of keeping them, upon paying what they cost or their actual value, or of permitting such possessor, if the latter can do so with advantage to himself and without deteriorating the land,

to remove them at his own expense; otherwise, in each case, the improvements belong to the owner, without indemnification; the owner may, in every case, compel the possessor in bad faith to remove them. — N. 555. — C. 411, 462, 582, 729, 958, 1546, 1640.

418. In the case of the third paragraph of the preceding article, if the improvements made by the possessor be so extensive and costly that the owner of the land cannot pay for them, he may, according to the circumstances and to the discretion of the court, compel the possessor to keep the property, and to pay the estimated value of it.

419. In case the party in possession is forced to give up the immoveable upon which he has made improvements for which he is entitled to be reimbursed, he has a right to retain the property until such reimbursement is made, without prejudice to his personal recourse to obtain repayment; saving the case of surrender in any hypothecary action, which is specially provided for in the title *Of Privileges and Hypothecs.* — N. 555. — C. 441, 732, 1539, 1546, 2072.

420. Deposits of earth and augmentations which are gradually and imperceptibly formed on land contiguous to a stream or river are called alluvion.

Whether the stream or river is or is not navigable or floatable, the alluvion which is produced becomes the property of the owner of the adjacent land, subject in the former case, to the obligation of leaving a foot-road or tow-path. — N. 556. — C. 507.

421. As to ground left dry by running water which insensibly withdraws from one of its banks by bearing in upon the other, the proprietor of the uncovered bank gains such ground, and the proprietor of the opposite bank cannot reclaim the land he has lost.

This right does not exist as regards land reclaimed from the sea, which forms part of the public domain.— N. 557. — C. 400.

422. Alluvion does not take place on the borders of lakes and ponds which are private property; neither the proprietor of the lake nor the proprietor of the adjacent land gains or loses in consequence of the waters happening to rise or fall above or below their ordinary level. — N. 558.

423. If a river or stream, whether navigable or not, carry away by sudden force a considerable and distinguishable part of an adjacent field and bear it towards a lower or opposite bank, the proprietor of the part carried away may reclaim it; [but he is obliged, on pain

of forfeiting his right, to do so within a year, to be reckoned from the possession taken of it by the proprietor of the land to which it has been united.] — N. 559.

424. Islands, islets and deposits of earth formed in the beds of navigable or floatable rivers and streams belong to the crown, if there be no title to the contrary. — N. 560. — C. 400.

425. Islands and deposits of earth which are formed in rivers which are not navigable or floatable belong to the proprietors of the banks on the side where the island is formed. If the island be not formed on one side only, it belongs to the proprietors of the banks on both sides, divided by a line supposed to be drawn in the middle of the river. — N. 561. — C. 458.

426. If a river or stream, by forming a new branch, cut and surround the field of a proprietor contiguous to it, and thereby form an island, the proprietor retains the property of his field, although the island be formed in a navigable or floatable river or stream. — N. 562.

427. If a navigable or floatable river or stream abandon its course to take a new one, the former bed belongs to the crown. If the river be not navigable or floatable, the proprietors of the land newly occupied take as an indemnity the ancient bed, each in proportion to the land which has been taken from him.—N. 563.—C. 400.

428. Pigeons, rabbits and fish which go into another dovecot, warren or pond, become the property of him to whom such pond, warren or dove-cot belongs, provided they have not been attracted there by fraud or artifice.

Bees living in a state of freedom are the property of the person discovering them, whether or not he be proprietor of the land on which they have establish themselves.

Whenever a swarm of bees leaves a hive, the proprietor may reclaim them, so long as he can prove his right of property therein, and he is entitled to take possession of them at any place on which they may settle, even if such place be on the land of another person, provided, however, that he notify the proprietor of such land and compensate him for all damages, and unless the swarm settles in a hive which is already occupied, in which cases the proprietor loses all right of property in such swarm.

If the proprietor of a swarm of bees declines to follow such swarm, and another person undertake the pursuit, such other person is substituted in the rights of the proprietor, and every swarm which is not followed becomes the property of the

proprietor of the land on which it settles, without regard to the place from which it came.

Any unpursued swarm which lodges on any property whatsoever, without settling thereon, may be secured by the first comer, unless the proprietor of the land objects.—R. S. Q. 5800. N. 564.

SECTION II.

OF THE RIGHT OF ACCESSION IN RELATION TO MOVEABLE PROPERTY.

429. The right of accession, when it has for its object two moveable things, belonging to two different owners, is entirely subordinate to the principles of natural equity.

The following rules which are obligatory in the cases where they apply, serve as examples in the cases not provided for, according to circumstances. — N. 565.

430. When two things belonging to different owners have been united so as to form a whole, although they are separable and one can subsist without the other, the whole belongs to the owner of the thing which forms the principal part, subject to the obligation of paying the value of the other thing to him to whom it belonged. — N. 566.

431. That part is reputed to be the principal one to which the other has been united only for the use, ornament or completion of the former. — N. 567.

432. However, when the thing united is much more valuable than the principal thing, and has been employed without the knowledge of its owner, he may require that the thing so united be separated in order to be returned to him, although the thing to which it has been joined may thereby suffer some injury. — N. 568.

433. If of two things united so as to form a whole, one cannot be considered as the accessory of the other, the more valuable, or, if the values be nearly equal, the more considerable in bulk, is deemed to be the principal. — N. 569.

434. If an artisan or any other person have made use of any material which did not belong to him to form a thing of a new description, whether the material can resume its previous form or not, he who was the owner of it has right to demand the thing so formed, on paying the price of the workmanship. — N. 570.

435. If however the workmanship be so important that it greatly exceeds the value of the material employed, it is then considered as the principal part, and the workman has a right to retain the thing, on paying

the price of the material to the proprietor. — N. 571.

436. When a person has made use of materials which in part belonged to him and in part did not, to make a thing of a different kind, without either of the two materials being entirely destroyed, but in such a way that they cannot be separated without inconvenience, the thing is common to the two proprietors, in proportion, as respects the one, to the material belonging to him, and as respects the other, to the material belonging to him and to the price of the workmanship.— N. 572.

437. When a thing has been formed by the admixture of several materials belonging to different proprietors, but of which neither can be looked upon as the principal matter, if the materials can be separated, the owner, without whose knowledge the materials have been mixed, may demand their division.

If the materials cannot be separated without inconvenience, the parties acquire the ownership of the thing in common, in proportion to the quantity, quality and value of the materials belonging to each. — N. 473.

438. If the material belonging to one of the proprietors be much superior in quantity and price, in that case the proprietor of the material of superior value may claim the thing produced by the admixture, on paying to the other the value of his material. — N. 574.

439. When the thing remains in common among the proprietors of the materials from which it is made, it must be dismissed of by licitation for the common benefit, if any one of them demand it. — N. 575. — C. 689, 1562.

440. In all cases where a proprietor whose material has been employed without his consent, to make a thing of a different description, may claim the proprietorship of such thing, he has the choice of demanding the restitution of his material in the same kind, quantity, weight, measure and quality, or its value. — N. 576.

441. Whoever is bound to give back a moveable object upon which he has made improvements or additions for which he is entitled to be reimbursed, may retain such object until he has been so reimbursed, without prejudice to his personal remedy.— C. 419, 1994 § 4, 2001.

442. Persons who have employed materials belonging to others and without their consent, may be condemned to pay damages if any there be. — N. 577.

TITLE THIRD.

OF USUFRUCT, USE AND HABITATION.

CHAPTER FIRST.

OF USUFRUCT.

443. Usufruct is the right of enjoying things of which another has the ownership, as the proprietor himself, but subject to the obligation of preserving the substance thereof. — N. 578. — C. 928, 2203.

444. Usufruct may be established by law, or by the will of man. — N. 579.

445. Usufruct may be established purely or conditionally, and may commence at once or from a certain day. — N. 580.

446. It may be established upon property of all kinds, moveable or immoveable. — N. 581. — C. 381.

SECTION I.

OF THE RIGHTS OF THE USUFRUCTUARY.

447. The usufructuary has the right to enjoy every kind of fruits, whether natural, industrial or civil, which the thing subject to the usufruct can produce. — N. 582.

448. Natural fruits are those which are the spontaneous produce of the soil. The produce and the increase of animals are also natural fruits.

The industrial fruits of the soil are those obtained by the cultivation or working thereof. — N. 583. — C. 478.

449. Civil fruits are the rent of houses, interest of sums due and arrears of rents. The rent due for the lease of farms is also included in the class of civil fruits. — N. 584.

450. Natural and industrial fruits attached by branches or roots, at the moment when the usufruct is open, belong to the usufructuary.

Those in the same condition at the moment when the usufruct ceases, belong to the proprietor, without recompense on either side for ploughing or sowing, but also without prejudice to the portion of the fruits which may be acquired by a farmer on shares, if there be one at the commencement or at the termination of the usufruct. — N. 585. — C. 1453.

451. Civil fruits are considered to be acquired day by day, and belong to the usufructuary in proportion

to the duration of his usufruct.

This rule applies to rent from the lease of farms, as it does to the rent of houses and to other civil fruits. — N. 586.

452. If the usufruct comprise things which cannot be used without being consumed, such as money, grain, liquors, the usufructuary has the right to use them, but subject to the obligation of paying back others of like quantity, quality and value, or their equivalent in money, at the end of the usufruct. — N. 587.

453. The usufruct of a life-rent gives also to the usufructuary, during the period of his usufruct, the right to retain the whole of the payments that he has received as payable in advance, without being obliged to make any restitution. — N. 588. — C. 1910.

454. If the usufruct comprise things which, without being at once consumed, deteriorate gradually by use, as linen or furniture, the usufructuary has the right to use them for the purpose for which they are destined, and, at the end of the usufruct, he is only obliged to restore them in the condition in which they may be, and not deteriorated by his fraud or fault. — N. 589.

455. The usufructuary cannot fell trees which grow on the land subject to the usufruct. Whatever he may require for his own use must be taken from those which have fallen accidentally.

If however among the latter there be not a sufficient quantity of a suitable kind for the repairs to which he is obliged, and for the keeping in repair and the working of the estate, he has a right to fell whatever may be required for these purposes, conformably to the usage of the place, or to the custom of proprietors; he may even fell trees for fuel, if there be any of the kind generally used in the locality for that purpose. — N. 590, 591, 592, 593.

456. Any fruit trees which die, even those which are uprooted or broken by accident, belong to the usufructuary, but he is obliged to replace them by others, unless the larger proportion has been thus destroyed, in which case he is not obliged to replace them. — N. 594.

457. The usufructuary may enjoy his right by himself, or lease it, and may even sell it or dispose of it gratuitously.

If he lease it, the lease expires with his usufruct; nevertheless the farmer or the tenant has a right and may be compelled to continue his enjoyment during the rest of the year which had begun before the usufruct expired; subject to the pay-

ment of the rent to the proprietor. — N. 595.

458. The usufructuary enjoys any augmentation caused by alluvion to the land of which he has the usufruct.

But his right does not extend to islands formed during the usufruct near the land which is subject to it and to which such islands belong. — N. 596. — C. 425.

459. He enjoys all rights of servitude, of passage, and generally all the rights of the proprietor in the same manner as the proprietor himself. — N. 597. — C. 946.

460. Mines and quarries are not comprised in the usufruct of land.

The usufructuary may nevertheless take therefrom all the materials necessary for the repair and maintenance of the estate subject to his right.

If however these quarries, before the opening of the usufruct, have been worked as a source of revenue by the proprietor, the usufructuary may continue such working in the way in which it has been begun. — N. 598. — C. 1274.

461. The usufructuary has no right over the treasure found, during the usufruct, on the land which is subject to it. — N. 598. — C. 586.

462. The proprietor cannot, by any act of his whatever, injure the rights of the usufructuary.

On his side, the usufructuary cannot, at the cessation of the usufruct, claim indemnity for any improvements he has made, even when the value of the thing is augmented thereby.

He may however take away the mirrors, pictures and other ornaments which he has placed there, but subject to the obligation of restoring the property to its former condition. — N. 599. — C. 417.

SECTION II.

OF THE OBLIGATIONS OF THE USUFRUCTUARY.

463. The usufructuary takes the things in the condition in which they are; but he can only enter into the enjoyment of them after having caused an inventory of the moveable property and a statement of the immoveables subject to his right to be drawn up, in the presence of or after due notice given to the proprietor, unless he is dispensed from doing so by the act constituting the usufruct. — N. 600. — P. 1387 et s.

464. He gives security to enjoy the usufruct as a prudent administrator, unless the act creating it exempts him from so doing; nevertheless the vendor or donor who has reserved the usufruct is not obliged to give security. — N. 601. — C. 1454.

465. If the usufructuary cannot give security, the immoveables are leased, farmed or sequestrated.

Sums of money comprised in the usufruct are invested; provisions, and other moveable things which are consumable by use, are sold, and the price produced is likewise invested.

The interest of such sums of money, and the rent from leases belong in these cases to the usufructuary. — N. 602. — C. 1455, 1824 § 1.

466. In default of security the proprietor may require that moveable property liable to be deteriorated by use, be sold in order that the price may be invested and received as in the preceding article.

Nevertheless the usufructuary may demand and the court may grant, according to circumstances, that a portion of moveables necessary for his use may be left to him on the simple security of his oath, and subject to the obligation of producing them at the expiration of the usufruct. — N. 603.

467. The delay to give security does not deprive the usufructuary of whatever fruits he is entitled to; they are due to him from the moment the usufruct is open.— N. 604.

468. The usufructuary is only liable for the lesser repairs. For the greater repairs the proprietor remains liable, unless they result from the neglect of the lesser repairs since the commencement of the usufruct, in which case the usufructuary is also held liable. — N. 605. — C. 1459.

469. The greater repairs are those of main walls and vaults, the restoration of beams and the entire roofs and also the entire reparation of dams, prop-walls and fences.

All other repairs are lesser repairs. — N. 606.

470. Neither the proprietor nor the usufructuary is obliged to rebuild what has fallen into decay or what has been destroyed by unforeseen event. — N. 607.

471. The usufructuary is liable, during his enjoyment, for all ordinary charges, such as ground-rents and other annual dues and contributions encumbering the property when the usufruct begins.

He is likewise liable for all charges of an extraordinary nature imposed thereupon since that time, such as assessments for the erection and repair of churches, public and municipal contributions and other like burthens. — N. 608, 609. — C. 1458.

472. A legacy made by a testator of a life-rent or alimentary pension, must be entirely paid by the universal legatee of the usufruct, or by the legatee by general title of the usufruct accord-

ing to the extent of his enjoyment, without any recourse in either case. — N. 610.

473. A usufructuary by particular title is not liable for the payment of any part of the hereditary debts, not even of those for which the land subject to the usufruct is hypothecated.

If he be forced, in order to retain his enjoyment, to pay any of these debts, he has his recourse against the debtor and against the proprietor of the land. — N. 611. — C. 735 et s., 886, 887.

474. A general usufructuary or a usufructuary by general title must contribute with the proprietor to the payment of the debts as follows:

The immoveables and other things subject to the usufruct are valued, and the contribution to the debts is fixed in proportion to such value.

If the usufructuary advance the sum for which the proprietor must contribute, the capital of it is restored to him at the expiration of the usufruct, without interest.

If the usufructuary will not make this advance, the proprietor has the choice either of paying the sum, and in such case the usufructuary is obliged to pay him the interest thereon during the continuance of the usufruct, or of causing a sufficient portion of the property subject to the usufruct to be sold. — N. 612. — C. 876.

475. The usufructuary is only liable for the costs of such suits as relate to the enjoyment, and for any other condemnations to which these suits may give rise. — N. 613.

476. If during the continuance of the usufruct, a third party commit any encroachments on the land, or otherwise attack the rights of the proprietor, the usufructuary is obliged to notify him of it, and in default thereof he is responsible for all the damage which may result therefrom to the proprietor, in the same manner as he would be if the injury were done by himself. — N. 614.

477. If an animal only be the subject of the usufruct, and it perish without the fault of the usufructuary, he is not bound to give back another, nor to pay its value. — N. 615.

478. If the usufruct be created on a herd or flock, and it perish entirely by accident or disease, and without the fault of the usufructuary, he is only obliged to account to the proprietor for the skins or their value.

If the flock do not perish entirely, the usufructuary is obliged to replace the animals which have perished,

up to the number of the increase. — N. 616.

SECTION III.

OF THE TERMINATION OF USUFRUCT.

479. Usufruct ends by the natural death of the usufructuary, if for life.—6 Ed. VII, c. 38, s. 2.

By the expiration of the time for which it was granted;

By the confusion or reunion in one person of the two qualities of usufructuary and of proprietor;

By non-user of the right during thirty years, and by prescription acquired by third persons;

By the total loss of the thing on which the usufruct is established. — N. 617. — C. 1462, 1463.

480. Usufruct may also cease by reason of the abuse the usufructuary makes of his enjoyment, either by committing waste on the property or by allowing it to depreciate for want of care.

The creditors of the usufructuary may intervene in contestations, for the preservation of their rights; they may offer to repair the injury done and give security for the future.

The courts may, according to the gravity of the circumstances, either pronounce the absolute extinction of the usufruct, or only permit the entry of the proprietor into possession of the object charged with it, subject to the obligation of annually paying to the usufructuary or to his representatives a fixed sum, until the time when the usufruct shall cease. — N. 618. — C. 1031, 1464.

481. A usufruct which is granted without term to a corporation only lasts thirty years. — N. 619.

482. A usufruct granted until a third party reaches a certain fixed age, continues until such time, although the third person should die before that age. — N. 620.

483. The sale of a thing subject to usufruct does not in any respect change the right of the usufructuary; he continues to enjoy his usufruct, unless he has formally renounced it. — N. 621.

484. The creditors of the usufructuary may have his renunciation annulled, if it be made to their prejudice. — N. 622. — C. 1032 et s.

485. If only a part of the thing subject to the usufruct perish, the usufruct continues to exist upon the remainder. — N. 623.

486. If the usufruct be established upon a building only, and such building be destroyed by fire or other accident, or fall from age, the usufructuary has no right to enjoy either the ground or the materials.

If the usufruct be established on a property of

which the building destroyed formed part, the usufructuary enjoys the ground and the materials. — N. 624.

CHAPTER SECOND.

OF USE AND HABITATION.

487. A right of use is a right to enjoy a thing belonging to another and to take the fruits thereof, but only to the extent of the requirements of the user and of his family.

When applied to a house, right of use is called right of habitation. — C. 381.

488. Rights of use and habitation are established only by the will of man, by deed *inter vivos* or by last will.

They cease in the same manner as usufruct.—N. 625. — C. 479 et s.

489. These rights cannot be exercised without previously giving security, and making statements and inventories as in the case of usufruct. — N. 626. — C. 463 et s.

490. He who has a right of use or of habitation, must exercise it as a prudent administrator. — N. 627.

491. Rights of use and of habitation are governed by the title which creates them, and are more or less extensive according to its dispositions. — N. 628.

492. If the title be not explicit as to the extent of these rights, they are governed as follows. — N. 629.

493. He who has the use of land is only entitled to so much of its fruits as is necessary for his own wants and those of his family.

He may even take what is required for the wants of children born to him after the grant of the right of use.—N. 630.

494. He who has a right of use can neither assign nor lease it to another.—N. 631.

495. He who has a right of habitation in a house may live therein with his family, even if he were not married when such right was granted to him. — N. 632.

496. A right of habitation is confined to what is necessary for the habitation of the person to whom it is granted and his family. — N. 633.

497. A right of habitation can neither be assigned nor leased. — N. 634.

498. If he who has the use take all the fruits of the land, or if he occupy the whole of the house, he is subject to the costs of cultivation, to the lesser repairs, and to the payment of all contributions, like the usufructuary.

If he only take a portion of the fruits, or if he only occupy a part of the house, he contributes in the proportion of his enjoyment.—N. 635.

TITLE FOURTH.

OF REAL SERVITUDES.

GENERAL PROVISIONS.

499. A real servitude is a charge imposed on one real estate for the benefit of another belonging to a different proprietor. — N. 637. — C. 381. RS.9-296

500. It arises either from the natural position of the property, or from the law, or it is established by the act of man. — N. 639.

CHAPTER FIRST.

OF SERVITUDES WHICH ARISE FROM THE SITUATION OF PROPERTY.

501. Lands on a lower level are subject towards those on a higher level to receive such waters as flow from the latter naturally and without the agency of man.

The proprietor of the lower land cannot raise any dam to prevent this flow. The proprietor of the higher land can do nothing to aggravate the servitude of the lower land. — N. 640.

502. He who has a spring on his land may use it and dispose of it as he pleases. —N. 642.

503. He whose land borders on a running stream, not forming part of the public domain, may make use of it as it passes, for the utility of his land, but in such manner as not to prevent the exercise of the same right by those to whom it belongs; saving the provisions contained in chapter 51 of the Consolidated Statutes for Lower Canada, or other special enactements.

He whose land is crossed by such stream may use it within the whole space of its course through the property, but subject to the obligation of allowing it to take its usual course when it leaves his land[1] — N. 644.

504. Every proprietor may oblige his neighbor to settle the boundaries between their contiguous lands.

The costs of so doing are common.

Abridged by 60 *V., c.* 50, *s.* 16.—N. 646.—P. 1059 et s.

504*a*. Boundaries may be determined either by mutual consent between neighbors, and by their mere act, or with the intervention of judicial authority.

[1] *Vide* R. S. Q. 5535 as to rights of neighboring proprietors.

If suit is taken, the costs are in the discretion of the court. (60 V., c. 50, s. 17).— N. 646.

505. Every proprietor may oblige his neighbor to make in equal portions or at common expense, between their respective lands, a fence, or other sufficient kind of separation according to the custom, the regulations and the situation of the locality. — N. 647, 648.

CHAPTER SECOND.

OF SERVITUDES ESTABLISHED BY LAW.

506. Servitudes established by law have for their object public utility or that of individuals. — N. 649.

507. Those established for public utility have for their object the foot-road or tow-path along the banks of navigable or floatable rivers, the construction or repair of roads or other public works.

Whatever concerns this kind of servitude is determined by particular laws or regulations. — N. 650. — C. 420.

508. The law subjects proprietors to different obligations with regard to one another independently of any stipulation. — N. 651.

509. Some of these obligations are governed by the laws concerning municipalities and roads.

The others relate to division walls and ditches, to cases where a counter-wall is necessary, to views upon the property of a neighbor, to the eaves of roofs, and to rights of way. — N. 652.

SECTION I.

OF DIVISION WALLS AND DITCHES, AND OF CLEARANCE.

510. Both in town and country, walls serving for separation between buildings up to the required heights, or between yards and gardens, and also between enclosed fields, are presumed to be common, if there be no title, mark or other legal proof to the contrary.—N. 653.

511. It is a mark that a wall is not common when its summit is straight and plumb with the facing on one side, and on the other side exhibits an inclined plane; and also when one side only has a coping, or mouldings, or corbels of stone, placed there in building the wall.

In such cases the wall is deemed to belong exclusively to the proprietor on whose side are the eaves or the corbels and mouldings. — N. 654.

512. The repairing and rebuilding of a common wall are chargeable to all those who have any right in it, in proportion to the right of each. — N. 655.

513. Nevertheless every co-proprietor of a common wall may avoid contributing to its repair and rebuilding by abandoning his share in the wall and renouncing his right of making use of it. — N. 656.

514. Every co-proprietor may build against a common wall and place therein joists or beams, to within [four inches] of the whole thickness of the wall, without prejudice to the right which the neighbor has to force him to reduce the beam to the half thickness of the wall, in case he should himself desire to put beams in the same place, or to build a chimney against it. — N. 657.

515. Every co-proprietor may raise the common wall at will, but at his own cost, upon paying an indemnity for the additional weight imposed, and bearing for the future the expense of keeping it in repair above the height which is common.

The indemnity thus payable is the sixth of the value of the superstructure.

On these conditions such superstructure becomes the exclusive property of him who built it; but it remains, as to the right of view, subject to the rules applicable to common walls.—N. 658.—C. 533.

516. If the common wall be not in a condition to support the superstructure, he who wishes to raise it must have it rebuilt at his own cost, and the excess of thickness must be taken on his own side. — N. 659.

517. The neighbor who has not contributed to the superstructure may acquire the joint-ownership of it, by paying half of the cost thereof, and the value of one half of the ground used for the excess of thickness, if there be any. — N. 660.

518. Every owner of property adjoining a wall, has the privilege of making it common in whole or in part, by paying to the proprietor of the wall half the value of the part he wishes to render common, and half the value of the ground on which such wall is built. — N. 661.

519. One neighbor cannot make any recess in the body of a common wall, nor can he apply or rest any work there, without the consent of the other, or on his refusal, without having caused to be settled by experts the necessary means to prevent the new work from being injurious to the rights of the other. — N. 662.

520. Every person may oblige his neighbor, in incorporated cities and towns, to contribute to the building and repair of the fence-wall separating their houses, yards and gardens situated in the said cities and towns, to a height of ten feet from the ground or the level of

the street, including the coping, and to a thickness of eighteen inches, each of the neighbors being obliged to furnish nine inches of ground; saving that he for whom such thickness is not sufficient may add to it at his own cost and on his own land. — N. 663.

521. [When the different stories of a house belong to different proprietors, if their titles do not regulate the mode of repairing and rebuilding, it must be done as follows:

All the proprietors contribute to the main walls and the roof, each in proportion to the value of the story which belongs to him;

The proprietor of each story makes the floor under him;

The proprietor of the first story makes the stairs which lead to it; the proprietor of the second story makes the stairs which lead from the first to his, and so on.] — N. 664.

522. When a common wall or a house is rebuilt, the active and passive servitudes continue with regard to the new wall or to the new house, provided they are not rendered more onerous, and provided the rebuilding be done before prescription is acquired. — N. 665. — C. 562 et s.

523. All ditches between neighboring properties are presumed to be common if there be no title nor mark to the contrary. — N. 666.

524. When the embankment or the earth thrown out of a ditch is only on one side of it, it is a mark that the ditch is not common. — N. 666.

525. A ditch is presumed to belong exclusively to him on whose side the earth is thrown out. — N. 666.

526. A common ditch must be kept at common expense. — N. 667.

527. Every hedge which separates land is reputed to be common, unless only one of the lands is inclosed, or there is a sufficient title or possession to the contrary.— N. 666.

528. No neighbor can plant trees or shrubs or allow any to grow nearer to the line of separation than the distance prescribed by special regulations, or by established and recognized usage; and in default of such regulations and usage, such distance must be determined according to the nature of the trees and their situation, so as not to injure the neighbor. — N. 670, 671.

529. Either neighbor may require that any trees and hedges which contravene the preceding article be uprooted.

He over whose property the branches of his neighbor's trees extend, although the trees are growing at the prescribed distance, may

compel his neighbor to cut such branches.

If the roots extend upon his property, he has a right to cut them himself. — N. 672, 673.

530. Trees growing in a common hedge are common as the hedge itself, and either of the neighbors has a right to have them felled. — N. 670.

531. Every proprietor or occupier of land in a state of cultivation, contiguous to uncleared land, may compel the proprietor or occupier of the latter to fell all trees along the line of separation which are of a nature to injure the cultivated land, and this on the whole length, and on the breadth, in the manner, and at the time determined by law, by regulations having force of law, or by established and recognized usage.

Trees, however, which may be preserved on or near the line, with or without curtailing the branches or roots, according to the three last preceding articles, are excepted.

Fruit trees and maple trees, which may be preserved in all cases near or along the line, but are subject to the same curtailing, are also excepted.

The fine for any contravention does not free one from the necessity of giving the clearance ordered by a competent tribunal, nor from the damages actually incurred since the party was put in default. — M. 417 et s.

SECTION II.

OF THE DISTANCE AND THE INTERMEDIATE WORKS REQUIRED FOR CERTAIN STRUCTURES.

532. The following provisions are established for incorporated cities and towns:

1. He who wishes to have a well near the common wall or that belonging to his neighbor, must make a counter-wall of masonry one foot thick;

2. He who wishes to have a privy near such walls must make a counter-wall of the same kind [fifteen inches] thick;

If however there be a well opposite, on the neighboring property, the thickness must be [twenty-one inches];

3. [When the well or privy is at the distance from the wall determined by municipal regulations and by established and recognized usage, such counter-wall is no longer required. If there be no such regulations or usage the distance is three feet];

4. He who wishes to have a chimney, or a hearth, or a stable, or a store for salt or other corrosive substances, near a common wall or wall belonging to his neighbor, or to raise the ground or heap earth against it, is obliged to make a counter-wall or

other work, the sufficiency of which is [determined by municipal regulations, by established and recognized usage, and, in default of any such, by the courts in each case];

5. He who wishes to have an oven, forge or furnace, must leave a vacant space of six inches between his own wall and the common wall or that of his neighbor. — N. 674.

SECTION III.

OF VIEW ON THE PROPERTY OF A NEIGHBOR.

533. One neighbor cannot, without the consent of the other, make in a common wall any window or opening of any kind whatever, not even those with fixed glass. —N. 675. — C. 508, 509, 514, 515, 519, 547, 548.

534. The proprietor of a wall which is not common adjoining the land of another, may make in such wall lights or windows with iron gratings and fixed glass, that is to say, such windows must be provided with an iron trellis the bars of which are not more than four inches apart, and a window-sash fastened with plaster or otherwise in such a way that it must remain closed. — N. 676.

535. Such windows or lights cannot be placed lower than nine feet above the floor or ground of the room it is intended to light, if it be on the ground floor; nor lower than seven feet from the floor, if in the upper stories. — N. 677.

536. One neighbor cannot have direct views or prospect-windows, nor galleries, balconies or other like projections overlooking the fenced or unfenced land of the other; they must be at a distance of six feet from such land. — N. 678.

537. Nor can he have side openings or oblique views overlooking such land, unless they are at a distance of two feet. — 679.

538. The distances mentioned in the two preceding articles are reckoned from the exterior facing of the wall where the opening is made, and if there be a balcony or other like protection, from the exterior line thereof. — N. 680.

SECTION IV.

OF THE EAVES OF ROOFS.

539. Roofs must be constructed in such a manner that the rain and snow from off them may fall upon the land of the proprietor, without his having a right to make it fall upon the land of his neighbor. — N. 681.

SECTION V.

OF THE RIGHT OF WAY.

540. A proprietor whose land is enclosed on all sides by that of others, and who has no communication with the public road, may claim a way upon that of his neighbors for the use of his property, subject to an indemnity proportionate to the damage he may cause. — N. 682.

541. The way must generally be had on the side where the crossing is shortest from the land so enclosed to the public road. — N. 683.

542. It should however be established over the part where it will be least injurious to him upon whose land it is granted.—N. 683.

543. If the land become so enclosed in consequence of a sale, of a partition, or of a will, it is the vendor, the copartitioner, or the heir, and not the proprietor of the land which offers the shortest crossing, who is bound to furnish the way, which is in such case due, without indemnity. — N. 684.

544. If the way thus granted cease to be necessary, it may be suppressed, and in such case the indemnity paid is restored, or the annuity agreed upon ceases for the future.

CHAPTER THIRD.

OF SERVITUDES ESTABLISHED BY THE ACT OF MAN.

SECTION I.

OF THE DIFFERENT KINDS OF SERVITUDES WHICH MAY BE ESTABLISHED ON PROPERTY.

545. Every proprietor having the use of his rights, and being competent to dispose of his immoveables, may establish over or in favor of such immoveables, such servitudes as he may think proper, provided they are in no way contrary to public order.

The use and the extent of these servitudes are determined according to the title which constitutes them, or according to the following rules if the title be silent. — N. 686.

546. Real servitudes are established either for the use of buildings or for that of lands.

Those of the former kind are called urban, whether the buildings to which they are due are situated in town or in the country.

Those of the second kind are called rural without regard to their situation.

Servitudes take their name from the property to which they are due, independently of the one which owes them. — N. 687.

547. Servitudes are either continuous or discontinuous.

Continuous servitudes are those the exercise of which may be continued without the actual intervention of man; such are water conduits, drains, rights of view and others similar.

Discontinuous servitudes are those which require the actual intervention of man for their exercise; such are the rights of way, of drawing water, of pasture and others similar. — N. 688.

548. Servitudes are apparent or unapparent.

Apparent servitudes are those which are manifest by external signs, such as a door, a window, an aqueduct, a sewer or drain, and the like.

Unapparent servitudes are those which have no external sign, as, for instance, the prohibition to build on a land or to build above a certain fixed height. — N. 689.

SECTION II.

HOW SERVITUDES ARE ESTABLISHED.

549. No servitude can be established without a title; possession even immemorial is insufficient for that purpose. — N. 690, 691.

550. The want of a title creating the servitude can only be supplied by an act of recognition proceeding from the proprietor of the land subject thereto. — N. 695.

551. As regards servitudes the destination made by the proprietor is equivalent to a title, but only when it is in writing, and the nature, the extent and the situation of the servitude are specified.— N. 692, 693.

552. He who establishes a servitude is presumed to grant all that is necessary for its exercise.

Thus the right of drawing water from the well of another carries with it the right of way. — N. 696. — C. 1024.

SECTION III.

OF THE RIGHTS OF THE PROPRIETOR OF THE LAND TO WHICH THE SERVITUDE IS DUE.

553. He to whom a servitude is due has the right of making all the works necessary for its exercise and its preservation. — N. 697.

554. These works are made at his cost and not at that of the proprietor of the servient land, unless the title constituting the servitude establishes the contrary. — N. 698.

555. Even in the case where the proprietor of the servient land is charged by the title with making the necessary works, for the exercise and for the preservation of the servitude, he may always free himself

from the charge by abandoning the servient immoveable, to the proprietor of the land to which the servitude is due. — N. 699.

556. If the land in favor of which a servitude has been established come to be divided, the servitude remains due for each portion, without however the condition of the servient land being rendered worse.

Thus in the case of a right of way, all the coproprietors have a right to exercise it, but they are obliged to do so over the same portion of ground. — N. 700.

557. The proprietor of the servient land can do nothing which tends to diminish the use of the servitude or to render its exercise more inconvenient.

Thus he cannot change the condition of the premises, nor transfer the exercise of the right to a place different from that on which it was originally assigned.

However if by keeping to the place originally assigned, the servitude should become more onerous to the proprietor of the servient land, or if such proprietor be prevented thereby from making advantageous improvements, he may offer to the proprietor of the land to which it is due another place as convenient for the exercise of his rights, and the latter cannot refuse it. — N. 701.

558. On his part, he who has a right of servitude can only make use of it according to his title, without being able to make, either in the land which owes the servitude, or in that to which it is due, any change which aggravates the condition of the former. — N. 702.

SECTION IV.

OF THE EXTINCTION OF SERVITUDES.

559. A servitude ceases when the things subject thereto are in such a condition that it can no longer be exercised. — N. 703. — P. 725 § 1, 780, 781.

560. It revives if the things be restored in such a manner that it may be used again, even after the time of prescription. — N. 704.

561. Every servitude is extinguished, when the land to which it is due and that which owes it are united in the same person by right of ownership. — N. 705.

562. Servitudes are extinguished by non-user during thirty years, between persons of full age and not privileged. — N. 706.

563. The thirty years commence to run for discontinuous servitudes from the day on which they cease to be used, and for continuous servitudes from the day on which any act is done preventing their exercise. — N. 707. — C. 547.

564. The manner of exercising a servitude may be prescribed like the servitude itself and in the same way. — N. 708.

565. If the land in favor of which the servitude is established belong to several persons by undivided shares, the enjoyment by one hinders the prescription with regard to the others.—N. 709.

566. If among the co-proprietors there be one against whom prescription cannot run, such as a minor, he preserves the right for all the others. — N. 710.

TITLE FIFTH.

OF EMPHYTEUSIS.

SECTION I.

GENERAL PROVISIONS.

567. Emphyteusis or emphyteutic lease is a contract by which the proprietor of an immoveable conveys it for a time to another, the lessee subjecting himself to make improvements, to pay the lessor an annual rent, and to such other charges as may be agreed upon.—C. 381.

568. The duration of emphyteusis cannot exceed ninety-nine years and must be for more than nine. — C. 579 § 1.

569. Emphyteusis carries with it alienation; so long as it lasts, the lessee enjoys all the rights attached to the quality of a proprietor. He alone can constitute it who has the free disposal of his property.

570. The lessee who is in the exercise of his rights, may alienate, transfer and hypothecate the immoveable so leased, without prejudice to the rights of the lessor; if he be not in the exercise of his rights, he can only do so with judicial authorization and formalities.

571. Immoveables held under emphyteusis may be seized as real property, under execution against the lessee by his creditors, who may bring them to sale with the formalities of a sheriff's sale. — P. 781 § 3.

572. The lessee is entitled to bring a possessory action against all those who disturb him in his enjoyment and even against the lessor. — P. 1064.

SECTION II.

OF THE RIGHTS AND OBLIGATIONS OF THE LESSOR AND OF THE LESSEE.

573. The lessor is obliged to guarantee the lessee, and to secure him in the enjoyment of the immoveable leased, during the whole time legally agreed upon.

He is also obliged to resume such immoveable and to discharge the lessee from the rent or dues stipulated, in the case of the latter wishing to leave it, unless there is an agreement to the contrary. — C. 579 § 4.

574. On his part the lessee is bound to pay annually the emphyteutic rent; if he allow three years to pass without doing so, he may be judicially declared to have forfeited the immoveable, although there be no stipulation on that subject. — C. 388, 392.

575. The rent is payable in the whole, without the lessee having a right to claim its remission or diminution, either on account of sterility or of unavoidable accidents which may have destroyed the harvest or hindered the enjoyment, or even for the loss of a part of the land.

576. The lessee is held for all the real rights and land charges to which the property is subjected.

577. He is bound to make the improvements which he has undertaken, as well as all greater or lesser repairs.

He may be forced to make them even before the expiration of the lease, if he neglect to do so, and the land suffer thereby any considerable deterioration.

578. The lessee has not the right to deteriorate the immoveable leased; if he commit any waste which greatly diminishes its value, the lessor may have him expelled and condemned to restore the things to their former condition.

SECTION III.

OF THE TERMINATION OF EMPHYTEUSIS.

579. Emphyteusis is not subject to tacit renewal.

It ends:

1. By the expiration of the time for which it was contracted, or after ninety-nine years, in case a longer term has been stipulated;

2. By forfeiture judicially pronounced for the causes set forth in articles 574 and 578, or for other legal causes;

3. By the total loss of the estate leased;

4. By abandonment.

580. The lessee is only allowed to abandon if he have satisfied for the past all the obligations which result from the lease, and particularly if he have paid or tendered all

arrears of the dues, and made the improvements agreed upon.

581. At the end of the lease, in whatever way it happens, the lessee must give up, in good condition, the property received from the lessor, as well as the buildings he obliged himself to construct, but he is not bound to repair those which he has erected without being obliged to do so.

582. As to improvements which the lessee has made voluntarily, without being bound to do so, the lessor has the option of either keeping them, upon paying what they cost or their actual value, or permitting the lessee, if the latter can do so with advantage to himself and without deteriorating the land, to remove them at his own expense; otherwise, in each case, they belong, without indemnification, to the lessor, who may, nevertheless, compel the lessee to remove them, in conformity with the provisions of article 417. — C. 729.

BOOK THIRD

OF THE ACQUISITION AND EXERCISE OF RIGHTS OF PROPERTY.

GENERAL PROVISIONS.

583. Ownership in property is acquired by prehension or occupation, by accession, by descent, by will, by contract, by prescription, and otherwise by the effect of law and of obligations. — N. 711, 712.

584. Things which have no owner are held to belong to the crown. — N. 713. — C. 401, 636, 637.

585. There are things which have no owner and the use of which is common to all. The enjoyment of these is regulated by laws of public policy. — N. 714.

586. The ownership of a treasure rests with him who finds it in his own property; if he find it in the property of another, it belongs half to him, and the other half to the owner of the property.

A treasure is any buried or hidden thing of which no one can prove himself owner, and which is discovered by chance. — N. 716. — C. 461.

587. The right of hunting and fishing is governed by particular laws of public policy, subject to the legally acquired rights of individuals. — N. 715.

588. Things which are the produce of the sea, or are drawn from its bottom, found floating on its waters, or cast upon its shores, and which never had an owner, belong, by right of occupancy, to the finder who has appropriated them. — N. 717.

589. Things once possessed, which are afterwards found at sea, or on the sea shore, or their price, if they have been sold, continue to be the property of the original owner, if he claim them, and if he do not, they belong to the crown; save in all cases the claims of those who find and preserve them, for the salvage and preservation. — N. 717.

590. Whatever relates to wrecked ships and their cargo, the articles and fragments coming from them, the mode of disposing of them and of the price they bring, and the right of salvage, is specially regulated by the Federal statute respecting wrecks, casualties and salvage. — R. S. Q. 6231. — R. S. C. 81. — N. 717.

591. The grass upon the beaches of the river St. Lawrence which are not private property, is, in certain places, granted by special laws or particular titles to the riparian proprietor, under the restrictions imposed by law or by regulations.

In other cases, if the crown have not otherwise disposed of it, it belongs by right of occupancy to him who cuts it.

592. Things found in or upon the river St. Lawrence, or the navigable portions of its tributaries, or upon the banks thereof, must be advertised and disposed of in the manner provided by special laws. R. S. Q. 6232.— 36 V., c. 55, s. 38.

593. Things found on the ground, on the public highways or elsewhere, even on the property of others, or which are otherwise without a known owner, are, in many cases, subject to special laws, as to the public notices to be given, the owner's right to claim them, the indemnification of the finder, their sale, and the appropriation of their price.

In the absence of such provisions, the owner who has not voluntarily abandoned them, may claim them in the ordinary manner, subject to the payment, when due, of an indemnity to the person who found and preserved them; if they be not claimed, they belong to such person by right of occupancy.

Unnavigable rivers are, for the purposes of this article, considered as places on land. — N. 717.

594. Among the things subject to the special provisions mentioned in the preceding article are:

1. Wood or other objects obstructing beaches and the adjoining lands;

2. Unclaimed goods in the hands of wharfingers, warehouse-keepers, and carriers either by land or by water;

3. Articles remaining in the post-office with dead-letters;

4. Things suspected to have been stolen, remaining in the hands of officers of justice;

5. Animals found straying.[1]

595. Certain matters which come under the heading of the present book are incidentally treated in the books preceding.

[1] *Vide* also R. S. Q. 5537 et s. continuing dispositions relating to articles 591, 593 and 594.

TITLE FIRST.

OF SUCCESSIONS.

GENERAL PROVISIONS.

596. Succession is the transmission by law or by the will of man, to one or more persons, of the property and the transmissible rights and obligations of a deceased person.

In another acceptation, the word "succession" means the universality of the things thus transmitted.

597. Abintestate succession is that which is established by law alone, and testamentary succession that which is derived from the will of man. The former takes place only in default of the latter.

Gifts in contemplation of death partake of the nature of testamentary successions.

The person to whom either of these successions devolves is called heir. — C. 757, 864.

598. Abintestate succession is subdivided into legitimate succession, which is conferred by law upon relatives, and irregular succession, when, in default of relatives, it devolves upon persons not related. — N. 756, 766.

599. [The law, in regulating a succession, considers neither the origin nor the nature of the property composing it. The whole forms but one inheritance which is transmitted and divided according to uniform rules, or the dispositions made by the proprietor.[1]] — N. 732.

CHAPTER FIRST.

OF THE OPENING OF SUCCESSIONS AND OF THE SEIZIN OF HEIRS.

SECTION I.

OF THE OPENING OF SUCCESSIONS.

600. The place where a succession devolves is determined by the domicile. — N. 110.

601. Successions devolve by natural death. — N. 718. — C. 35, 36, 99. — 6 Ed. VII, c. 38, s. 2.

602. 6 Ed. VII, c. 38, s. 2.

603. Where several persons, respectively called to the succession of each other, perish by one and the same accident, so that it is impossible to ascertain which of

[1] As to succession duties or taxes, *vide* 55-56 V., c. 17; 57 V., c. 16; 58 V., c. 16; 59 V., c. 17.

them died first, the presumption of survivorship is determined by circumstances, and, in their absence, by the considerations of age and sex, conformably to the rules contained in the following articles. — N. 720.

604. Where those who perished together were under fifteen years of age, the eldest is presumed to have survived;

If they were all above the age of sixty, the youngest is presumed to have survived;

If some were under the age of fifteen and others over that of sixty, the former are presumed to have survived;

If some were under fifteen or over sixty years of age, and the others in the intermediate age, the presumption of survivorship is in favor of the latter. — N. 721.

605. If those who perished together were all between the full ages of fifteen and sixty, and of the same sex, the order of nature is followed, according to which the youngest is presumed to survive;

But if they were of different sexes, the male is always presumed to have survived. — N. 722.

SECTION II.

OF THE SEIZIN OF HEIRS.

606. Abintestate successions pass to the lawful heirs in the order established by law; in default of such heirs, they devolve to the surviving consort, and if there be none, they fall to the crown. — N. 723. — C. 112, 401, 636, 637.

607. The lawful heirs, when they inherit, are seized by law alone of the property, rights and actions of the deceased, subject to the obligation of discharging all the liabilities of the succession; but the surviving consort and the crown require to be judicially put in possession, in the manner set forth in the Code of Civil Procedure. — N. 724. — C. 638 et s., 2216. — P. 1422 et s.

CHAPTER SECOND.

OF THE QUALITIES REQUISITE TO INHERIT.

608. In order to inherit, it is necessary to be civilly in existence at the moment when the succession devolves; thus, the following are incapable of inheriting:

1. Persons who are not yet conceived;

2. Infants who are not viable when born;

3. 6 Ed. VII, c. 38, s. 2. — N. 725.—C. 36, 105, 838, 900.

609. Aliens may inherit in Lower Canada, in the same manner as British subjects. — N. 726. — C. 25.

610. The following persons are unworthy of inheriting and, as such, are excluded from successions:

1. He who has been convicted of killing or attempting to kill the deceased;

2. He who has brought against the deceased a capital charge, adjudged to be calumnious;

3. The heir of full age, who, being cognizant of the murder of the deceased, has failed to give judicial information of it. — N. 727. — C. 893.

611. The failure to inform cannot however be set up against the ascendants or descendants, or the husband or wife of the murderer, nor against the brothers or sisters, uncles or aunts, nephews or nieces of the murderer, nor against persons allied to him in the same degrees. — N. 728.

612. Any heir who is excluded from the succession by reason of unworthiness is bound to restore all the fruits and revenues that he has received since the succession devolved. — N. 729.

613. The children of an unworthy heir are not excluded from the succession by reason of the fault of their father, if they come to it in their own right and without the aid of representation, which in this case does not take place. — N. 730.

CHAPTER THIRD.

OF THE DIFFERENT ORDERS OF SUCCESSION.

SECTION I.

GENERAL PROVISIONS.

614. Successions devolve to the children and descendants of the deceased, and to his ascendants and collateral relations, in the order and according to the rules hereinafter laid down. — N. 731.

615. Proximity of relationship is determined by the number of generations, each generation forming a degree. N. 735.

The succession of degrees forms the line.

616. The succession of degrees between persons who descend one from the other is called the direct line; that between persons who do not descend the one from the other, but from a common ancestor, is called the collateral line.

The direct line is distinguished into the direct descending, and the direct ascending line.

The former connects the ancestor with his descendants; the latter connects the individual with his ancestors. — N. 736.

617. In the direct line the degrees are computed to be as many as there are generations between the persons; thus the son is, with respect

to the father, in the first degree, the grandson, in the second, and reciprocally as to the father and grandfather in respect of the son and grandson. — N. 737.

618. In the collateral line the degrees are reckoned by the generations from one relation up to and not including the common ancestor, and from the latter to the other relation.

Thus two brothers are in the second degree, uncle and nephew in the third, cousins-german in the fourth, and so on. — N. 738.

SECTION II.

OF REPRESENTATION.

619. Representation is a fiction of law, the effect of which is to put the representatives in the place, in the degree and in the rights of the person represented. — N. 739. — C. 613, 654.

620. Representation takes place without limit in the direct line descending; it is allowed whether the children of the deceased compete with the descendants of a predeceased child, or whether all the children of the deceased having died before him, the descendants of these children happen to be in equal or unequal degrees amongst themselves.—N. 740.

621. Representation does not take place in favor of ascendants; the nearest in each line excludes the more distant. — N. 741.

622. In the collateral line representation is admitted only where nephews and nieces succeed to their uncle and aunt concurrently with the brother and sister of the deceased. — N. 742.

623. In all cases where representation is admitted, the partition is effected according to roots; if one root have several branches, the subdivision is also made according to roots in each branch, and the members of the same branch divide among themselves by heads. — N. 743.

624. Living persons cannot be represented, but only those who are naturally dead.

A person may represent him whose succession he has renounced. — N. 744. — 6 Ed. VII, c. 38, s. 2.

SECTION III.

OF SUCCESSIONS DEVOLVING TO DESCENDANTS.

625. Children or their descendants succeed to their father and mother, grandfathers and grand-mothers, or other ascendants, without distinction of sex or primogeniture, and whether they are the issue of the same or of different marriages.

They inherit in equal portions and by heads when they are all in the same degree and in their own right; they inherit by roots, when all, or some of them, come

by representation. — N. 745. — C. 620.

SECTION IV.

OF SUCCESSIONS DEVOLVING TO ASCENDANTS.

626. [If a person dying without issue, leave his father and mother and also brothers or sisters, or nephews or nieces in the first degree, the succession is divided into two equal portions, one of which devolves to the father and mother, who share it equally, and the other to the brothers and sisters, nephews and nieces of the deceased, according to the rules laid down in the following section.] — N. 748. — C. 631.

627. [If, in the case of the preceding article, the father or mother had previously died, the share he or she would have received accrues to the survivor of them.] — N. 749.

628. [If the deceased leave no issue nor brothers nor sisters, nephews nor nieces in the first degree, nor father nor mother, but only other ascendants, the latter succeed to him to the exclusion of all other collaterals.] — N. 746.

629. [In the case of the preceding article the succession is divided equally between the ascendants of the paternal line and those of the maternal line.

The ascendant nearest in degree takes the half accruing to his line to the exclusion of all others.

Ascendants in the same degree inherit by heads in their line.] — N. 746.

630. Ascendants inherit, to the exclusion of all others, property given by them to their children or other descendants who die without issue, where the objects given are still in kind in the succession, and if they have been alienated, the price, if still due, accrues to such ascendants.

They also inherit the right which the donee may have had of resuming the property thus given. — N. 747.

SECTION V.

OF COLLATERAL SUCCESSIONS.

631. [If the father and mother of a person dying without issue, or one of them, have survived him, his brothers and sisters, as well as his nephews and nieces in the first degree, are entitled to one half of the succession. — N. 751. — C. 626.

632. [If both father and mother have previously died, the brothers, sisters, and nephews and nieces in the first degree, of the deceased succeed to him, to the exclusion of the ascendants and the other collaterals. They succeed either in their own

right, or by representation as provided in the second section of this chapter.] — N. 750.

633. [The division of the half or of the whole of the succession coming to the brothers, sisters, nephews or nieces, according to the terms of the two preceding articles, is effected in equal portions among them, if they be all born of the same marriage; if they be the issue of different marriages, an equal division is made between the two lines paternal and maternal of the deceased, those of the whole blood sharing in each line, and those of the half blood sharing each in his own line only. If there be brothers and sisters, nephews and nieces on one side only, they inherit the whole of the succession to the exclusion of all the relations of the other line.] — N. 752.

634. [If the deceased, having left no issue, nor father nor mother, nor brothers, nor sisters, nor nephews nor nieces in the first degree, leave ascendants in one line only, the nearest of such ascendants takes one-half of the succession, the other half of which devolves to the nearest collateral relation of the other line.

If, in the same case, there be no ascendant, the whole succession is divided into two equal portions, one of which devolves to the nearest collateral relation of the paternal line, and the other to the nearest of the maternal line.]

Among collaterals, saving the case of representation, the nearest excludes all the others; those who are in the same degree partake by heads. — N. 753.

635. Relations beyond the twelfth degree do not inherit.

In default of relations within the heritable degree in one line, the relations of the other line inherit the whole. — N. 755.

SECTION IV.

OF IRREGULAR SUCCESSIONS.

636. When the deceased leaves no relations within the heritable degree, his succession belongs to his surviving consort. — N. 767. — C. 112, 598, 606.

637. In default of a surviving consort, the succession falls to the crown. — N. 768. — C. 401, 598, 606.

638. In the case of the two preceding articles a statement of the property of the succession, coming to the surviving consort or to the crown, must be made, at their diligence, by means of an inventory or other equivalent instrument, before they can claim to be authorized to take in possession.— N. 769.

639. This possession must

be demanded in the superior court of original jurisdiction of the district in which the succession opens, and the suit is prosecuted and adjudicated upon in the manner and according to the forms determined in the Code of Civil Procedure. — N. 770. — C. 607, 2216. — P. 1422 et s.

640. Whenever the prescribed rules and formalities have not been complied with, the heirs, if any appear, may claim an indemnity, and even damages, according to circumstances, for the consequent losses incurred. — N. 772.

CHAPTER FOURTH.

OF ACCEPTANCE AND RENUNCIATION OF SUCCESSIONS.

SECTION I.

OF ACCEPTANCE OF SUCCESSIONS.

641. No one is bound to accept a succession which has devolved to him. — N. 775.

642. A succession may be accepted purely and simply, or under benefit of inventory. — N. 774, 788, 789, 793. — C. 660 et s. — P. 1405 et s.

643. A married woman cannot validly accept a succession without being authorized thereto by her husband, or judicially, according to the provisions of chapter six, of the title *Of Marriage*.

Successions which devolve to minors and interdicted persons cannot be validly accepted otherwise than in conformity with the provisions contained in the titles which treat respectively of minority, and of majority. — N. 217, 461, 462, 463, 776.— C. 177 et s., 301, 302, 1284, 1287, 1288.

644. The effect of acceptance reaches back to the day when the succession devolved. — N. 777.

645. Acceptance may be either express or tacit; it is express when a person assumes the title or quality of heir in an authentic or private act; it is tacit when the heir performs an act which necessarily implies his intention to accept, and which he would have no right to perform except in his capacity of heir. — N. 778.

646. Mere conservatory acts and those of supervision and provisional administration are not acts of acceptance, if the title and quality of heir have not been assumed. — N. 779. — C. 665.

647. A gift, sale or transfer of his heritable rights made by a co-heir, either to a stranger or to all or some of his co-heirs, implies, on his part, an acceptance of the succession.

The same presumption results:

1. From the renunciation

made, even gratuitously, by one heir in favor of one or more of his co-heirs; 2. From the renunciation made in favor even of all the co-heirs without distinction, if he receive the price of his renunciation. — N. 780. — C. 658, 1061, 1579 et s.

648. Where the person to whom a succession has devolved dies without having renounced or expressly or tacitly accepted it, his heirs may accept or reject it in his stead. — N. 781.

649. [If such heirs do not agree to accept or to reject the succession, it is held to be accepted under benefit of inventory.] — N. 782.

650. A person of full age cannot impugn his express or tacit acceptance of a succession, unless such acceptance has been the result of fraud, fear or violence; he can never disclaim it on the ground of lesion only, unless the succession has become absorbed or notably diminished by the discovery of a will which was unknown at the time of the acceptance. — N. 783. — C. 991 et s.

650*a*. Letters of verification may be obtained in the case of a succession *ab intestat*, devolving in this Province, having property situate outside of its limits or debts due by persons not residing therein.

The procedure in such case is regulated by the Code of Civil Procedure. — R. S. Q., 5801. — P. 1411 et s.

SECTION II.

OF RENUNCIATION OF SUCCESSIONS.

651. Renunciation of a succession is not presumed; it is effected by a notarial deed, or by a judicial declaration which is recorded. — N. 784.

652. An heir who renounces is deemed to never have been heir. — N. 785.

653. The share of a party renouncing accrues to his co-heirs. If he be alone, the whole succession devolves to the next in degree. — N. 786.

654. No one can take as the representative of an heir who has renounced. If the party renouncing be the sole heir in his degree, or if all his co-heirs have renounced, the children take in their own right and inherit by heads. — N. 787.

655. The creditors of an heir who renounces, to the prejudice of their rights, may procure the rescission of such renunciation, and afterwards accept the succession themselves, in right of their debtor, and in his place and stead.

In such case the renunciation is annulled only in favor of the creditors who have

demanded the rescission, and merely to the extent of their claims. It is not annulled in favor of the heir who has renounced. — N. 788. — C. 1031 et s.

656. An heir is never too late to renounce the succession, as long as he has not formally or tacitly accepted it. — N. 789.

657. An heir who has renounced a succession may nevertheless resume it, so long as it has not been accepted by another having a right to it; but he resumes it in the state in which it then is, and without prejudice to the rights which third parties have acquired upon the property of such succession, by prescription or by acts validly made while it was vacant. — N. 790. — C. 302.

658. No one can renounce the succession of a living person, or alienate the contingent rights he may claim therein, unless it is by contract of marriage. — N. 791. — C. 1061.

659. Any heir who has abstracted or concealed property belonging to a succession forfeits the right of renouncing it; notwithstanding his subsequent renunciation he remains unconditional heir, without right to claim any share in the property abstracted or concealed. — N. 792. — C. 670.

SECTION III.

OF THE FORMALITIES OF ACCEPTANCE, OF BENEFIT OF INVENTORY AND ITS EFFECTS, AND OF THE OBLIGATIONS OF THE BENEFICIARY HEIR.

660. In order to obtain benefit of inventory the heir is bound to demand it by a petition to the court or to one of the judges of the court of superior original jurisdiction of the district in which the succession devolved; this petition is proceeded and adjudicated upon in the manner and form required by the Code of Civil Procedure. — C. 301, 649. — P. 1405 et s.

661. [The judgment granting the petition must be registered in the registry office of the division in which the succession devolved.]

662. Such demand must be preceded or followed by the making of a faithful and exact inventory of the property of the succession, before notaries, in the form and within the delays established by the rules of procedure.— N. 794. — P. 1387 et s.

663. The beneficiary heir is also bound, if the majority of the creditors or other persons interested require it, to give good and sufficient security for the value of the moveable property comprised in the inventory, and for whatever moneys, arising from the

sale of immoveables, he may then or thereafter have in his hands.

In default of such security, the court may, according to circumstances, adjudge the heir to have forfeited the benefit of inventory, or order that the moveables be sold and that the proceeds, as well as the other moneys of the succession which he may have in hand, be deposited in court, to be applied in discharging the liabilities of the succession. — N. 807.

664. The heir is allowed three months to make the inventory, counting from the time when the succession devolved.

He has moreover, in order to deliberate upon his acceptance or renunciation, a delay of forty days, which begin to run from the day of the expiration of the three months for the inventory, or from the day of the closing of the inventory, if it be completed within the three months. — N. 795. — C. 874.

665. If however there be in the succession articles of a perishable nature, or of which the preservation is costly, the heir may cause them to be sold, without thereby incurring the presumption of having accepted; but such sale must be made publicly, and after the notices and publications required by the rules of procedure. — N. 796. — C. 646.

666. During the delays for making the inventory and deliberating, the heir cannot be compelled to assume the quality, nor can any sentence be obtained against him; if he renounce at or before the expiration of the delays, the lawful costs he has incurred up to that time are chargeable to the succession. — N. 797. — C. 2238. — P. 177 § 1, 178.

667. After the expiration of the above delays, the heir may, in case an action is brought against him, demand a further delay, which the court seized of the case may grant or refuse, according to circumstances. — N. 798.

668. Costs of suit, in the case of the preceding article, are chargeable to the succession, if the heir prove that he had no knowledge of the death, or that the delays were insufficient, whether by reason of the situation of the property or of the contestations which have arisen; if he make no such proof, he remains personally liable for the costs. — N. 799.

669. The heir, nevertheless, after the expiration of the delays granted by article 664, and even of that given by the judge under article 667, still retains the power of making an inventory and of becoming beneficiary heir, if he have not otherwise performed any act of heirship, or if he have not been condemned, in his quality of unconditional heir, by a judg-

ment which has become final. — N. 800.

670. An heir who is guilty of concealment, or who knowingly or fraudulently has omitted to include in the inventory any effects of the succession, forfeits the benefit of inventory. — N. 801. — C. 659.

671. The effect of benefit of inventory is to give the heir the advantage:

1. Of being liable for the debts of the succession only to the extent of the value of the property he has received from it;

2. Of not confounding his private property with that of the succession, and of retaining against the succession the right of demanding payment of his own claims. — N. 802. — C. 878, 1156 § 4, 2237. — P. 1410.

672. The beneficiary heir is charged to administer the property of the succession, and must render an account of his administration to the creditors and legatees. He cannot be compelled to pay out of his private property unless he has been put in default to produce his account and has failed to fulfil this obligation.

After the verification of the account he cannot be compelled to pay out of his private property except to the extent of the sums remaining in his hands. — N. 803.

673. In his administration of the property of the succession the beneficiary heir is bound to exercise all the care of a prudent administrator.— N. 804.

674. If the beneficiary heir cause the moveables of the succession to be sold, the sale must be made publicly and after the notices and publications required by the rules of procedure.

If he produce them in kind, he is liable only for the depreciation or the deterioration caused by his negligence. — N. 805. — P. 1408.

675. With regard to the immoveables, if it become necessary to sell them, the sale, and the distribution of the price arising from it, are proceeded with in the manner and form followed with respect to the property of vacant successions, according to the rules laid down in the following section. — N. 806. — P. 1409, 1428.

676. The beneficiary heir, before disposing of the property of the succession, and after having made the inventory, gives notice of his quality in the manner established in the Code of Civil Procedure.

After two months from the giving of the first notice, if there be no actions, seizures or judicial contestations, by or between the creditors or legatees, the beneficiary heir may pay the creditors and legatees as they present themselves.

If there be actions, seiz-

ures or contestations of which he has received judicial notice, he can only pay according to the directions of the court.—N. 808.—P. 1406.

677. The beneficiary heir may at all times:

1. Renounce the benefit of inventory, either judicially or by a notarial deed, to become unconditional heir, upon giving the same notices as when he accepted;

2. Render a final account in court, upon giving the same notices as when he accepted, and any other notices the court may direct, in order to be freed from his administration, whether he has legally paid, by order of the court or extra-judicially, all the debts of the succession, or whether he has duly paid them to the extent of the full value he has received.

By means of the discharge obtained from the court he may retain in kind any property remaining in his hands which forms part of the succession. — N. 808.

678. The beneficiary heir may likewise, with the consent of all parties interested, render an amicable account without judicial formalities.

679. If the discharge be based upon the payment by the beneficiary heir of all the debts, without, however, his having paid out to the extent of what he received, he is not liberated as regards creditors who present themselves within three years from the discharge, and shew satisfactory cause for not having come forward within the required delays, but he is bound to satisfy them so long as he has not paid out the full value of what he received. — N. 809.

680. The discharge of the beneficiary heir does not prejudice the claim of the unpaid creditors against the legatee who has received to their detriment, unless the latter proves that they might have been paid by using due diligence, without his being left answerable towards other creditors who received in lieu of the claimant. — N. 809.

681. The expenses of seals, if any have been affixed, of the inventory, and of the account, are chargeable to the succession. — N. 810.

682. The form and contents of the account which the beneficiary heir must render are regulated by the Code of Civil Procedure. — P. 567 et s.

683. [In the collateral as well as in the direct line, the heir who accepts under benefit of inventory is not excluded by the one who offers to accept unconditionally.]

SECTION IV.

OF VACANT SUCCESSIONS.

684. After the expiration of the delays for making the

inventory and for deliberating, if no one come forward to claim a succession, if there be no known heirs, or if the known heirs have renounced, such succession is deemed vacant. — N. 811.— C. 401.

685. Upon the demand of any party interested, a curator to such succession is named by the court or by one of the judges of the court of original jurisdiction of the district in which it devolves.

This appointment is made in the manner and form prescribed by the Code of Civil Procedure. — N. 812. — C. 347 et s. — P. 1338, 1426 et s.

686. Such curator gives notice of his quality, is sworn, and forthwith proceeds to the making of the inventory; he administers the property of the succession, exercises and prosecutes all the rights pertaining to it, answers all claims brought against it, and renders an account of his administration. — N. 813. — C. 2237.

687. After the appointment of the curator, if an heir or legatee appear who lays claim to the succession, he may cause the curatorship to be set aside for the future, and, upon proof of his rights, may obtain possession, by means of an action brought before the proper tribunal.

688. The provisions of the third section of this chapter as to the form of the inventory, the notices to be given, the mode of administration, and the accounts to be rendered by beneficiary heirs, apply to curators of vacant successions.—N. 814.

CHAPTER FIFTH.

OF PARTITION AND RETURNS.

SECTION I.

OF THE ACTION OF PARTITION AND ITS FORM.

689. No one can be compelled to remain in undivided ownership; a partition may always be demanded notwithstanding any prohibition or agreement to the contrary.

It may however be agreed or ordered that the partition shall be deferred during a limited time, if there be any reason of utility which justifies the delay. — N. 815.

690. Partition may be demanded even though one of the coheirs enjoys separately a part of the property of the succession, if there have been no act of partition, nor a sufficient possession to acquire prescription. — N. 816.

691. Neither the tutor of a minor, nor the curator of an interdicted person or of an absentee, can demand the partition of the immovcables of a succession which has

devolved to such minor, interdicted person or absentee, but he may be compelled to join in it, and in such case the partition is effected judicially, and with the formalities required for the alienation of the property of minors.

The tutor or curator may however demand the final partition of the moveables, and the provisional division of the immoveables of the succession. — N. 817. — C. 305.

692. A husband may, without the concurrence of his wife, demand the partition of the moveables or immoveables which have accrued to her and have fallen into the community. As to things which are excluded from it, the husband cannot demand their partition without the concurrence of his wife; he may however, if he have a right to enjoy her property, demand a provisional division.

The coheirs of the wife cannot demand a definitive partition without suing both husband and wife. — N. 818. — C. 1292, 1298, 1416, 1417.

693. If all the heirs be of full age, be present, and agree, the partition may be effected in such form and by such act as the parties interested deem proper.

If any of the heirs be absent or unwilling, if there be among them minors or interdicted persons, in all such cases the partition can only be effected judicially, and the rules laid down in the succeeding articles are to be followed.

If there be several minors represented by one tutor and having adverse interests, a special and separate tutor must be given to each, to represent him in the partition. — N. 819, 838. — P. 1039.

694. The action of partition and the contestations which arise in it are submitted to the court of the place where the succession devolves, if it devolve in Lower Canada; if not, to the court of the place where the property is situate, or of the domicile of the defendant.

It is before this tribunal that licitations and the proceedings connected with them are to be effected. — N. 822. — C. 600. — P. 102.

695. In the action of partition and its incidents the same proceedings are had as in ordinary suits, saving any modifications introduced by the Code of Civil Procedure. — N. 823. — P. 1037 et s.

696. The valuation of immoveables is made by experts who are chosen by the parties interested, or who, upon the refusal of such parties, are officially appointed.

The report of the experts must declare the grounds of the valuation, it must indicate whether the thing es-

timated can be conveniently divided, and in what manner, and must determine, in case of division, each of the portions which may be made of it, and the value of such portion. — N. 824. — P. 392 et s., 1040.

697. Each of the coheirs may demand his share in kind of the moveable and immoveable property of the succession; nevertheless, if there be seizing or opposing creditors, or if the majority of the coheirs deem a sale necessary to discharge the liabilities of the succession, the moveable property is publicly sold in the ordinary manner. — N. 826. — P. 1399 et s.

698. If the immoveables cannot conveniently be divided they must be sold by licitation before the court.

Nevertheless the parties, if they be all of full age, may consent to the licitation being made before a notary upon the choice of whom they agree. — N. 827. — C. 1562, 1563. — P. 1045, 1046.

699. After the moveable and immoveable property have been estimated, and sold if there be cause for it, the court may send the parties before a notary upon whom they have agreed, or who has been officially named if they do not agree in their choice.

They are to proceed, before such notary, to the account to which they are bound towards one another, to the formation of the general mass, the composition of the shares and the fixing of the compensation to be furnished to each of the copartitioners. — N. 828. — P. 410, 1044.

700. Each coheir returns into the mass, according to the rules hereinafter laid down, the gifts made to him and the sums in which he is indebted. — N. 829. — C. 712 et s.

701. If the return be not made in kind, the coheirs entitled to it pretake an equal portion from the mass of the succession.

These pretakings are made as much as possible in objects of the same nature and quality as those which are not returned in kind. — N. 830.

702. After these pretakings, the parties are to proceed to the formation, out of what remains in the mass, of as many shares as there are partitioning heirs or roots.— N. 831. — P. 1040.

703. In the formation and composition of the shares, the separation of immoveables into small parcels and the division of industrial establishments is to be avoided as much as possible; it is also proper to put into each share, if possible, the same quantity of moveables, immoveables, rights and credits, of the same nature and value. — N. 832.

704. The inequality of shares in kind, when it is un-

avoidable, is to be compensated by payment of the difference either in rent or in money. — N. 833.

705. The shares are to be formed by one of the coheirs, if they can agree amongst themselves in the choice, and if he who is chosen accept the office; in the opposite case the shares are to be formed by an expert appointed by the court, and are afterwards to be drawn by lot. — N. 834.

706. Before proceeding to draw, each copartitioner is allowed to propose his objections as to the formation of the shares. — N. 835.

707. The rules laid down for the division of the masses to be apportioned are also to be observed in the subdivisions of the partitioning roots. — N. 836.

708. If in the operations referred to a notary, contestations arise, he must draw up a statement of the difficulties and of the respective allegations of the parties, and submit them for the decision of the court that appointed him. These incidents are proceeded upon according to the forms prescribed by the laws of procedure. — N. 837.

709. Where licitation takes place by reason of there being amongst the heirs absentees, interdicted persons, or minors, even emancipated, it can only be effected judicially, and with the formalities prescribed for the alienation of the property of minors. — N. 460, 819, 839.— P. 1341 et s., 1404.

710. Every person, even a relation, who is not entitled to succeed to the deceased, and to whom one of the coheirs has assigned his right in the succession, may be excluded from the partition, either by all the coheirs or by one of them, on being reimbursed the price of such assignment. — N. 841.

711. After the partition, each of the parties has a right to be put in possession of the titles belonging to the objects which have fallen to him.

The titles to a divided property remain with him who has the greatest share in it, subject to the obligation of giving the use of them, when required, to the copartitioners interested therein.

The titles common to the whole inheritance are delivered to him whom the heirs have chosen to be the depositary of them; subject to the obligation of giving the use of them to the other copartitioners whenever required. If they disagree in the choice, it is made by the judge. — N. 842.

SECTION II.

OF RETURNS.

712. [Every heir, even the beneficiary heir, coming to a succession, must return to the general mass all that he has

received from the deceased by gift *inter vivos*, directly or indirectly; he cannot retain the gifts made nor claim the legacies bequeathed by the deceased, unless such gifts and legacies have been given him expressly by preference and beyond his share, or with an exemption from return.]—N. 843. — C. 1468.

713. The heir may, nevertheless, by renouncing the succession, retain the gifts or claim the legacies made to him. — N. 845.

714. [A donee who at the time of the gift was not an heir, but who at the time when the succession devolves is entitled to succeed, is bound to return the gift, unless the testator has exempted him from doing so.] — N. 846.

715. Gifts and legacies made to the son of a person who, at the time when the succession devolves has become entitled to succeed, are subject to be returned.

The father coming to the succession of the donor or testator is bound to return them. — N. 847.

716. A grandson coming to the succession of his grandfather is bound to return what has been given to his father, although he should renounce the succession of the latter. — N. 848.

717. The obligation to return the gifts and legacies made during the marriage, either to the consort who is entitled to succeed, or to the other consort alone, or to both, depends upon the interest of the heir who is capable of succeeding and the advantages he derives therefrom, according to the rules laid down in the title concerning marriage covenants, as to the effect of gifts and legacies made to the consorts during marriage. — N. 849. — C. 1272 et s.

718. Return is only made to the succession of the donor or testator. — N. 850.

719. Whatever has been laid out for the establishment of one of the coheirs, or for the payment of his debts must be returned. — N. 851.

720. The expenses of nourishment, maintenance, education and apprenticeship, the ordinary expenses of equipment, of weddings, and customary presents, are not subject to be returned.—N. 852.

721. The same rule applies to the profits which the heir may have derived from agreements made with the deceased, if at the time at which they are made they do not confer an indirect advantage. — N. 853.

722. The profits and interest of the things subject to be returned are due only from the day when the succession devolves. — N. 856. — C. 601, 602.

723. Returns are due only from coheir to coheir; they are not due to the legatees nor to the creditors of the succession. — N. 857.

724. Returns are effected

either in kind or by taking less. — N. 858. — C. 701.

725. The return of moveable property is only made by taking less; it cannot be returned in kind. — N. 868.

726. The return of money received is also made by taking less in the money of the succession. In case of insufficiency, the donee or legatee may dispense with the return of money, by abandoning a proportionate value in the moveable property, or in default of moveable property, in the immoveables of the succession. — N. 869.

727. An immoveable given or bequeathed, which has perished by a fortuitous event, and without the fault of the donee or legatee, is not subject to be returned.— N. 855.

728. [As to immoveables, the donee or legatee may at his option return them in all cases, either in kind or by taking less according to valuation.] — N. 859, 860.

729. If the immoveable be returned in kind, the donee or legatee has a right to be reimbursed the expenditures made upon it; those which were necessary, conformably to the rules established by article 417, and those which were unnecessary, according to article 582. — N. 861, 862.

730. The donee or legatee must, on the other hand, account for the injuries and deteriorations which have diminished the value of the immoveable returned in kind, if they result from his own act or from that of his representatives.

This rule does not apply if they have been caused by a fortuitous event, and without his or their participation. — N. 863.

731. [When the return is made in kind, if the immoveable returned be hypothecated or encumbered, the copartitioners may require the donee or legatee to discharge it from such hypothec or incumbrance; if he fail to do so, he can only return by taking less.

The parties may however agree that the return shall be made in kind; this is effected without prejudice to the claims of the hypothecary creditors, which are charged in the partition of the succession to the party making the return.] — N. 865. — C. 2021.

732. The coheir who returns an immoveable in kind may retain possession of it until he is effectively reimbursed the sums due to him for disbursements and ameliorations.—N. 867.—C. 419.

733. The immoveables remaining in the succession are estimated according to their condition and value at the time of the partition.

Those which are subject to return, or which have been returned in kind, whether they have been given or bequeathed, are to be estimated according to their value at the time of the partition,

according to the condition in which they were at the time of the gift, or, as to legacies, at the time when the succession devolved; regard being had to the provisions contained in the preceding articles. — N. 860, 861.

734. The moveable things found in the succession, and those which are returned as being legacies, are likewise estimated according to their condition and value at the time of the partition, and those which are returned as having been given, according to their condition and value at the time of the gift. — N. 868.

SECTION III.

OF PAYMENT OF DEBTS.

735. An heir who comes alone to the succession is bound to discharge all the debts and liabilities.

The same rule applies to a universal legatee.

A legatee by general title is held to contribute in proportion to his share in the succession.

A particular legatee is bound only in case of the insufficiency of the other property, and is also subject to hypothecary claims against the property bequeathed; saving his recourse against those who are held personally. — N. 870, 871. — C. 472 et s., 875 et s., 880 et s., 1122 et s., 1136, 1137, 2230, 2231. — P. 605, 606.

736. If there be several heirs or several universal legatees, they contribute to the payment of the debts and charges, each in proportion to his share in the succession. — N. 870, 871.

737. A legatee under general title, who takes concurrently with the heirs, contributes to the debts and charges in the same proportion. — N. 871.

738. The obligation resulting from the preceding articles is personal to the heir and universal legatees, or legatees under general title; it gives a direct action, against each of them respectively, to the particular legatees and to the creditors of the succession. — N. 873.

739. In addition to the personal action, the heir and universal legatee, or legatee under general title, are held hypothecarily for whatever claims affect the immoveables included in their share; saving their recourse against those who are personally liable, for their share, according to the rules applicable to warranty. — N. 871, 873.

740. An heir or universal legatee, or a legatee under general title, who, not being personally bound, pays the hypothecary debts charged upon the immoveable included in his share, becomes subrogated in all the rights of the creditor against the other coheirs or colegatees for

their share ; conventional subrogation cannot in such a case have a greater effect; saving the rights of the beneficiary heir as creditor. — N. 875.

741. A particular legatee who pays an hypothecary debt for which he is not liable in order to free the immoveable bequeathed to him, has his recourse against those who take the succession, each for his share, with subrogation in the same manner as any other person acquiring under particular title. — N. 874. — C. 889.

742. In the event of heirs or legatees exercising their recourse against their coheirs or colegatees, by reason of an hypothecary debt, the liability of such as are insolvent is divided rateably among all the others, in proportion to their respective shares. — N. 876. — C. 749.

743. The creditors of the deceased and his legatees have a right to a separation of the property of the succession from that of the heirs and universal legatees, or legatees under general title, unless there is novation. This right may be exercised as long as the property exists in the hands of the latter, or upon the price of the sale, if it be yet unpaid. — N. 878, 879, 880. — C. 879, 1990, 2106.

744. The creditors of the heir or legatee are not allowed to claim this separation of property, nor to exercise any right of preference, against the creditors of the succession. — N. 881.

745. The creditors of the succession and those of the copartitioners have a right to be present at the partition if they require it.

If the partition be made in fraud of their rights, they may attack it in the same manner as any other act made to their detriment. — N. 865, 882. — C. 1031 et s.

SECTION IV.

OF THE EFFECTS OF PARTITION AND OF THE WARRANTY OF SHARES.

746. Each copartitioner is deemed to have inherited alone and directly all the things comprised in his share, or which he has obtained by licitation, and to have never had the ownership of the other property of the succession. — N. 883.

747. Every act having for its object to put an end to indivision amongst coheirs and legatees is deemed to be a partition, although it should purport to be a sale, an exchange, a transaction, or have received any other name. — N. 888.

748. The copartitioners are respectively warrantors towards each other for all disturbances or evictions proceeding from a cause anterior to the partition.

Such warranty does not take place if the kind of eviction suffered have been excepted by some provision of the act of partition; it ceases if the party suffer eviction through his own fault. — N. 884. — C. 1508 et s.

749. Each of the copartitioners is personally bound, in proportion to his share, to indemnify his coheir for the loss caused to him by the eviction.

If one of the copartitioners be insolvent, the portion for which he is liable must be divided rateably among all the solvent coheirs, according to their respective shares. — N. 885. — C. 742, 2014, 2104, 2105.

750. There is no warranty against the insolvency of the debtor of a claim which has fallen to one of the coheirs, if such insolvency do not occur until after the partition.

Nevertheless, there is an action of warranty in the case of a rent, when the debtor of it has become insolvent at any time since the partition; unless the loss arises from the fault of the party to whom the rent was allotted.

The insolvency of debtors which exists at the time of the partition gives rise to warranty in the same manner as eviction. — N. 886.— C. 1577.

SECTION V.

OF RESCISSION IN MATTERS OF PARTITION.

751. Partitions may be rescinded for the same causes as other contracts.

[Rescission on the ground of lesion takes place in the case of minors only, according to the rules declared in the title *Of Obligations.*]

The mere omission of an object belonging to the succession does not give rise to the action of rescission, but only gives a right to a supplement of the act of partition. — N. 887, 889. — C. 1001 et s.

752. When it becomes necessary to decide whether there is lesion, the value of the objects at the time of the partition is to be considered. — N. 890. — C. 733, 734.

753. The defendant in an action of rescission of partition may arrest its progress and prevent the bringing of another, by offering and delivering to the plaintiff the supplement of his share in the succession, either in money or in kind. — N. 891.

TITLE SECOND.

OF GIFTS *INTER VIVOS* AND BY WILL.

CHAPTER FIRST.

GENERAL PROVISIONS.

754. A person cannot dispose of his property by gratuitous title, otherwise than by gift *inter vivos* or by will. — N. 893.

755. Gift *inter vivos* is an act by which the donor divests himself, by gratuitous title, of the ownership of a thing, in favor of the donee, whose acceptance is requisite, and renders the contract perfect. This acceptance makes it irrevocable, saving the cases provided for by law, or a valid resolutive condition. — N. 894.

756. A will is an act of gift in contemplation of death, by means of which the testator, without the intervention of the person benefited, makes a free disposal of the whole or of a part of his property, to take effect only after his death, with power at all times to revoke it. Any acceptance of it purporting to be made in his life time is of no effect. — N. 895.

757. Certain gifts may be made irrevocably *inter vivos* in a contract of marriage, to take effect, however, only after death. They partake of gifts *inter vivos* and of wills, and are treated of specially in the sixth section of the second chapter of this title. — N. 897. — C. 597.

758. Every gift made so as to take effect only after death, which is not valid as a will, or as permitted in a contract of marriage, is void. — N. 943, 947.

759. The prohibitions and restrictions as to the capacity for contracting, alienating or acquiring, established elsewhere in this code, apply to gifts *inter vivos* and to wills, with the modifications contained in the present title.

760. Gifts *inter vivos* or by will may be conditional.

An impossible condition, or one contrary to good morals, to law, or to public order, upon which a gift *inter vivos* depends, is void, and renders void the disposition itself, as in other contracts.

In a will such a condition is considered as not written, and does not annul the disposition. — N. 900, 1172. — C. 13, 831.

CHAPTER SECOND.

OF GIFTS *inter vivos*.

SECTION II.

OF THE CAPACITY TO GIVE AND TO RECEIVE BY GIFT *inter vivos*.

761. All persons capable of disposing freely of their property, may do so by gift *inter vivos*, save the exceptions established by law. — N. 902.

762. Gifts purporting to be *inter vivos* are void, as presumed to be made in contemplation of death, when they are made during the supposed mortal illness of the donor, whether it be followed or not by his death, unless circumstances tend to render them valid.

If the donor recover, and leave the donee in peaceable possession for a considerable time, the nullity is covered. — C. 758.

763. Minors cannot give *inter vivos*, even with the assistance of their tutors, unless it be by their contract of marriage, as provided in the title *Of Obligations*.

Emancipated minors may nevertheless give moveable articles, according to their condition and means, and provided they do not materially affect their capital.

Tutors, curators and other administrators cannot give the property entrusted to them, except things of moderate value, in the interest of their charge.

The necessity of a wife being authorized by her husband applies to gifts *inter vivos*, whether for giving or for receiving.

Public corporations, even those having power to alienate, besides the special provisions and formalities which concern them, cannot give gratuitously without the sanction of the authorities to whom they are subject and of the main body of corporators; those who administer generally for corporations may nevertheless give alone, within the limits above defined as to tutors and curators.

Private corporations may give *inter vivos* in the same manner as individuals, with the consent of the main body of corporators. — N. 903, 904, 1095. — C. 36 § 2, 177, 322, 1006, 1267, 1292.

764. [The prohibitions and restrictions respecting gifts and benefits bestowed by future consorts in case of second marriages no longer exist.]

765. All persons capable of succeeding and of acquiring may receive by gift *inter vivos*, saving any exception established by law, and subject to the necessity of legal acceptance by the donee, or by a person qualified to accept for him. — N. 902. — C. 36 § 2.

766. Corporations may acquire by gift *inter vivos*, as by other contracts, such property as they are allowed to possess. — N. 910. — C. 366.

767. Minors become of age, and persons who have been under the control of others, cannot give *inter vivos* to their former tutors or curators, so long as their administration actually continues and they have not rendered their account; [they may however give to their own ascendants who have exercised these offices.] — N. 907. — C. 311.

768. Gifts *inter vivos* made in favor of the person with whom the donor has lived in concubinage, or of the incestuous or adulterine children of such donor, are limited to maintenance.

[This restriction does not apply to gifts made in a contract of marriage entered into between the concubinaries.

Other illegitimate children may receive by gift *inter vivos* like all other persons.] — N. 908.

769. [Gifts *inter vivos* made in favor of the priests or ministers of religion having the spiritual direction of the donor, of the physicians and others attending him with the view of restoring his health, or of the advocates and attorneys engaged in lawsuits in his behalf, cannot be set aside by mere presumption of law, as defective by reason of undue influence or want of consent. The presumption in this case, as in all others, must be established by facts.] — N. 909. — C. 839.

770. The prohibition against consorts benefiting each other during marriage by acts *inter vivos* is set forth in the title concerning marriage covenants. —— N. 1099. — C. 1265.

771. The capacity to give or to receive *inter vivos* is to be considered relatively to the time of the gift. It must exist at each period, with the donor and with the donee, when the gift and the acceptance are effected by different acts.

It suffices that the donee be conceived at the time of the gift or when it takes effect in his favor, provided he be afterwards born viable. — N. 906. — C. 791, 794.

772. The favor given to contracts of marriage renders valid the gifts therein made to the children to be born of the intended marriage.

It is not necessary that the substitute should be in existence at the time of the gift by which the substitution is created. — N. 1081. — C. 788, 790, 818, 819, 929.

773. A gift *inter vivos* of the property of another is void; it is however valid if the donor subsequently become proprietor of it.

774. Dispositions made in favor of persons incapable of

receiving are void, whether they are concealed under the form of onerous contracts, or executed in the name of persons interposed.

The ascendants, the descendants, the presumptive heir at the time of the gift, and the consort of the incapable person are held to be interposed, unless relations of kindred, or of services rendered, or other circumstances tend to destroy the presumption.

This nullity takes place even when the person interposed survives the person who is incapable. — N. 911, 1099, 1100.

775. [Children of a deceased person cannot claim legitim in consequence of gifts made by him *inter vivos*.]

SECTION II.

OF THE FORM OF GIFTS AND OF THEIR ACCEPTANCE.

776. Deeds containing gifts *inter vivos* must under pain of nullity be executed in notarial form and the original thereof be kept of record. The acceptance must be made in the same form.

Gifts of moveable property, accompanied by delivery, may however be made and accepted by private writings, or verbal agreements.

Gifts validly made out of Lower Canada, or within its limits but in certain localities excepted by statute, need not be in notarial form. — N. 931. — C. 7.

777. It is essential to gifts intended to take effect *inter vivos* that the donor should actually divest himself of his ownership in the thing given.

[The consent of the parties is sufficient, as in sale, without the necessity of delivery.]

The donor may reserve to himself the usufruct or precarious possession, or he may pass the usufruct to one person, and give the naked ownership to another, provided he divests himself of his right of ownership.

The thing given may be claimed, as in the case of sale, from the donor who withholds it, and the donee may demand the rescission of the gift in default of its being delivered, without prejudice to his damages in cases where he may claim them.

[If without reservation of usufruct or of precarious possession, the thing given remain unclaimed in the hands of the donor until his death, it may be revendicated from his heirs, provided the deed has been registered during the lifetime of the donor.]

The gift of an annuity created by the deed of such gift, or of a sum of money or other indeterminate thing which the donor promises to pay or to deliver, divests the donor in the sense that he becomes the debtor of the donee. — N. 938, 949. — C.

446, 795, 1205 et s., 1063 et s., 1472.

778. Present property only can be given by acts *inter vivos*. All gifts of future property by such acts are void, as made in contemplation of death. Gifts comprising both present and future property are void as to the latter, but the cumulation does not render void the gift of the present property.

The prohibition contained in this article does not extend to gifts made in a contract of marriage. — N. 943. — C. 758.

779. A donor may stipulate for the right of taking back the thing given, in the event of the donee alone, or of the donee and his descendants dying before him.

A resolutive condition may in all cases be stipulated, either in favor of the donor alone, or of third persons.

The right to take back, or any other resolutive right, is exercised in cases of gift in the same manner and with the same effects as the right of redemption in the case of sale. — N. 949, 951, 952. — C. 1546 et s.

780. A gift may consist of a person's whole property, and it is then universal; or of the whole of the moveable or immoveable property, of the whole of the property of the matrimonial community or of any other universality, or of an aliquot portion of such property, and is in such cases a gift by general title; or it may be limited to things particularly described, and is then a gift by particular title.

781. The abandonment or the partition of present property is considered as a gift *inter vivos*, and is subject to the same rules.

The same disposition cannot be made in contemplation of death in an act *inter vivos*, except by means of a gift inserted in a contract of marriage, such as is treated of in the sixth section of this chapter. — N. 1075. — C. 758.

782. It may be stipulated that a gift *inter vivos* shall be suspended, revoked, or reduced, under conditions which do not depend solely upon the will of the donor.

If the donor reserve to himself the right to dispose of or to take back at pleasure some object included in the gift, or a sum of money out of the property given, the gift holds good for the remainder, but is void as to the part reserved, which continues to belong to the donor, except in gifts by contract of marriage. — N. 944, 946, 947. — C. 824.

783. All gifts *inter vivos* stipulated to be revocable at the mere will of the donor are void.

This does not apply to gifts made by contract of marriage. — C. 824.

784. Gifts *inter vivos* of present property are void if they are made subject to the

condition of paying other debts or charges than those which exist at the time of such gifts, or than those to come, the nature and amount of which have been expressed and defined in the deed or in the statement annexed to it.

This article does not apply to gifts by contract of marriage. — N. 945, 947. — C. 825.

785. The causes of nullity and prohibitions declared in the last three preceding articles and article 778, take effect notwithstanding all stipulations or renunciations by which it may be sought to evade them. — N. 946.

786. [Unless some special law requires it, a deed of gift need not be accompanied by a statement of the moveable property given; the legal proof of its nature and quantity devolves upon the donee.] — N. 948.

787. Gifts *inter vivos* do not bind the donor nor produce any effect until after they are accepted. If the donor be not present at the acceptance, they take effect only from the day on which he acknowledges or is notified of it. — N. 932. — C. 755.

788. [The acceptance of a gift need not be in express terms. It may be inferred from the deed or from circumstances, among which may be counted the presence of the donee to the deed, and his signature.]

This acceptance is presumed in a contract of marriage, as well with regard to the consorts as to the future children. In gifts of moveable property this presumption also results from the delivery.

789. Gifts *inter vivos* may be accepted by the donee himself, authorized and assisted if so it be, as in other contracts; minors, persons interdicted for prodigality, and those to whom an adviser has been judicially appointed, may also accept unassisted, saving their right to be relieved; tutors, curators and ascendants may accept in behalf of minors, as laid down in the title *Of Minority, Tutorship and Emancipation,* and curators appointed to interdicted persons may also accept for such persons.

The persons who compose a corporation or administer for it may also accept gifts in its behalf. — C. 177, 303.

790. In gifts *inter vivos* in favor of children born and to be born, where such gifts may be made, the acceptance by those who are born, or by a qualified person for them, holds good for the others not yet born, if they avail themselves of it. — C. 772, 788.

791. The acceptance may be subsequent to the deed of gift; but it must be made during the lifetime of the donor, and while he is still capable of giving. — N. 932. — C. 771.

792. [Minors and interdict-

ed persons cannot be relieved from the acceptance or repudiation made in their name by a qualified person, if it have been previously authorized by a judge, upon the advice of a family council. With these formalities the acceptance is as effectual as if it were made by a person of age, in the full exercise of his rights.] — N. 942.

793. Deeds of gift may be executed subject to acceptance, without the donee being therein represented. An acceptance purporting to be made by the notary, or other person not authorized, does not render the gift void, but it is without effect, and the confirmation by the donee can only avail as an acceptance from the time at which it takes place.

794. Gifts cannot be accepted after the death of the donee by his heirs or representatives. — C. 771.

SECTION III.

OF THE EFFECT OF GIFTS.

795. [Gifts *inter vivos* of present property when they are accepted, divest the donor of and vest the donee with the ownership of the thing given, as in sale, without any delivery being necessary.] — N. 938. — C. 777, 1472.

796. Gifts do not by the mere effect of law give rise to any obligation of warranty on the part of the donor, who is deemed to give the thing only in so far as it belongs to him.

Nevertheless if the cause of eviction arise from the indebtedness or the act of the donor, he is obliged, though he have acted in good faith, to reimburse the donee who has paid to free himself; unless the latter be bound to make such payment in virtue of the deed of gift, either by law or by agreement.

Warranty to a greater or less extent may be stipulated in gifts, as in any other contracts. — C. 1509, 1510, 1578.

797. A universal donee *inter vivos* of present property is personally liable for all the debts due by the donor at the time of the gift.

A donee by general title *inter vivos* of such property is personally liable for such debts in proportion to what he receives. — C. 780, 825.

798. Nevertheless the donee, by whatsoever title, may, if the things given be sufficiently particularized in the gift, or if he have made an inventory, free himself from the debts of the donor by rendering an account and giving up all that he has received.

If he be sued hypothecarily only, he may, like any other possessor, free himself by abandoning the immoveable hypothecated, without prejudice to the rights of the donor, towards whom he may

be bound to make the payment.

799. A donee by particular title *inter vivos* is not personally liable for the debts of the donor. In case of an hypothecary action he may abandon the immoveable charged, like any other purchaser.

800. The obligation to pay the debts of the donor may be extended or limited by the deed of gift, subject to the legal prohibitions concerning future and uncertain debts.

The right of the creditor in such case against the donee personally, beyond that which results from the law, is governed by the rules set forth as to delegation and indication in matters of payment in the title *Of Obligations.*— C. 784, 1173 et s.

801. The exception of particular things, whatever may be their number or value, in a universal gift or a gift by general title, does not exonerate the donee from payment of the debts. — N. 946.

802. The creditors of the donor have a right to demand the separation of his property from that of the donee, whenever the latter is liable for the debt, according to the rules laid down in the preceding title as to such separations in matters of succession. — C. 1990, 2106.

803. If at the time of the gift, and deduction being made of the things given, the donor were insolvent, the previous creditors, whether their claims are hypothecary or not, may obtain the revocation of the gift, even though the donee were ignorant of the insolvency.

In the case of insolvent traders, gifts made by them within three months previous to the assignment, or the writ of attachment in compulsory liquidation, are voidable, as presumed to be fraudulent. — C. 1032 et s.

SECTION IV.

OF REGISTRATION AS REGARDS GIFTS *inter vivos* IN PARTICULAR.

804. Registration of gifts *inter vivos* in the offices established for the registration of real rights, takes the place of the inscription in the offices of the courts which is abolished.

Gifts of immoveables must be registered in the office of the division in which they are situate; gifts of moveable property, in the office of the division where the donor resided at the time of the gift. — N. 939. — C. 941, 2092.

805. The effect of the registration of gifts *inter vivos* and of the neglect of such registration, is regulated, as to immoveables and real rights, by the general laws concerning the registration of such rights.

Beyond this the registra-

tion of gifts is required particularly in the interest of the heirs and the legatees of the donor, his creditors and all others interested, according to the following rules.

806. All gifts *inter vivos*, of moveable or immoveable property, even those which are remuneratory, must be registered; save the exceptions contained in the two following articles. The donor himself cannot set up the want of registration, neither can the donee or his heirs; but it may be set up by any person entitled to do so under the general registry laws, by the heir of the donor, by his universal or his particular legatees, by his creditors, even though they be posterior and not hypothecary, and by all other persons interested in having the gift declared void. — N. 941. — C. 777, 2098.

807. Gifts made in the direct line by contract of marriage, are not affected by want of registration further than they may be under the general registry laws.

All other gifts in contracts of marriage, even between future consorts, or in contemplation of death, and all other gifts in the direct line, remain subject to registration in the same manner as gifts in general. — C. 938.

808. Gifts of moveable effects, whether universal or particular, are exempt from registration when they are followed by actual delivery and public possession by the donee. — C. 938.

809. Gifts are subject to the rules concerning registration of real rights contained in the eighteenth title of this book, and are no longer subject to the rules which governed inscriptions in the prothonotary's office. — N. 939. — C. 804.

810. The donor is not liable for the consequences of the want of registration, although he have bound himself to effect it.

Married women, minors and interdicted persons cannot be relieved from the failure to register the gift, but they have their recourse against those who neglected to effect such registration.

Husbands, tutors, administrators, and others whose duty it is to attend to such registration, cannot avail themselves of the absence of it. — N. 940, 942.

SECTION V.

OF THE REVOCATION OF GIFTS.

811. Gifts *inter vivos* accepted are liable to be revoked:

1. By reason of ingratitude on the part of the donee;

2. By means of the resolutive condition, in cases where it may be validly stipulated;

3. For the other legitimate causes by which contracts

may be annulled, unless some particular exception is applicable. — N. 953.

812. [In gifts, the subsequent birth of children to the donor does not constitute a resolutive condition, unless it is so stipulated.] — C. N. 960, 962, 963, 964, 965, 966.

813. Gifts may be revoked by reason of ingratitude, without a stipulation to that effect:

1. If the donee have attempted the life of the donor;

2. If he have been guilty towards him of ill-usage, crimes, or grievous injuries;

3. If he refuse him maintenance, regard being had to the nature of the gift and the circumstances of the parties.

Gifts by contract of marriage are subject to this revocation, and so are remuneratory or onerous gifts in so far as they exceed the value of the services or of the charges. — N. 955, 956, 959.

814. The demand of revocation on the ground of ingratitude must be made within a year from the date of the offence imputed to the donee, or within a year from the day when such offence became known to the donor.

Such revocation cannot be demanded by the donor against the heirs of the donee, nor by the heirs of the donor against the donee or his heirs, unless the action has been commenced by the donor against the donee himself, or unless, in the second case, the donor died within a year after the offence was committed or became known to him. — N. 955, 956, 957.

815. Revocation on the ground of ingratitude does not prejudice alienations made by the donee, nor hypothecs or other charges created by him, previously to the registration of the judgment of revocation, when the purchaser or creditor has acted in good faith.

In cases of revocation on the ground of ingratitude the donee is condemned to restore the thing given, if it be still in his possession, together with its fruits from the date of the judicial demand; if he have alienated it since such demand, he is condemned to restore what it was worth at the time of the demand. — N. 956, 958.

816. [Gifts cannot be revoked by reason of the nonfulfilment of obligations entered into by the donee, as charges or otherwise, unless the revocation is stipulated in the deed; and such revocation is subject in all respects to the same rules as the dissolution of sale in default of payment of the price, without the necessity of any preliminary condemnation obliging the donee to the fulfilment of his obligations.]

The stipulation of all other resolutive conditions when

legally made has the same effect in gifts as in other contracts.—N. 953.—C. 1536 et s.

SECTION VI.

OF GIFTS BY CONTRACT OF MARRIAGE, WHETHER OF PRESENT PROPERTY OR MADE IN CONTEMPLATION OF DEATH.

817. The rules concerning gifts *inter vivos* apply to those which are made by contract of marriage, with such modifications as result from special provisions. — N. 1081, 1092.

818. Fathers and mothers, and other ascendants, relations in general, and even strangers, may, in a contract of marriage, give to the future consorts or to one of them, or to the children to be born of their marriage, even with substitution, the whole or a portion of their present property, or of the property they may leave at their death, or of both together.— N. 943, 1082, 1084, 1089. — C. 772.

819. Subject to the same rules, when particular exceptions do not apply, future consorts may likewise, by their contract of marriage, give to each other, or one to the other, or to the children to be born of their marriage, property either present or future. — N. 943, 1091.

820. Owing to the favor of marriage and the interest which future consorts may have in arrangements made in favor of third persons, it is lawful for relations, for strangers, and for the future consorts themselves, to make in a contract of marriage whereby the future consorts or their children are benefited by the same donor, all gifts whatsoever of present property to third parties, whether relations or strangers.

For the same reasons, the ascendants of a future consort may, in a contract of marriage by which he also is benefited, make gifts in contemplation of death in favor of his brothers or sisters. All other gifts in contemplation of death made in favor of third parties are void. — N. 943.

821. Gifts of present property by contract of marriage are, like all others, subject to acceptance *inter vivos*. The acceptance is presumed in the cases mentioned in the second section of this chapter. Third parties not present to the deed may accept separately, either before or after the marriage, gifts made in their favor. — N. 1087. — C. 788.

822. Gifts by contract of marriage of present or future property are valid, even as regards third parties, only in the event of the marriage taking place. If the donor or the third party who has accepted the gift die before the marriage, the gift is not void, but remains suspended

by the condition that the marriage will take place. — N. 1088.

823. Gifts of present property by contract of marriage cannot be revoked by the donor, even as regard third parties benefited who have not yet accepted, unless for legal grounds, or by reason of a resolutive condition validly stipulated.

Gifts in contemplation of death, made by such acts, are irrevocable in so far that the donor, without legal grounds or a valid resolutive condition, cannot revoke them, nor dispose of the given property by gift *inter vivos* or by will, unless it is in small amounts, by way of recompense or otherwise. He remains nevertheless owner in other respects of the property thus given and may dispose of it by onerous title and for his own benefit. Even if the gift in contemplation of death be universal he may acquire and possess property and dispose of it under the foregoing restrictions, and may contract, otherwise than by gratuitous title, obligations which affect the property thus given. — N. 1083. — C. 898, 930.

824. It may be stipulated that a gift, either of present property or in contemplation of death, made in a contract of marriage, shall be suspended, revocable, reducible, or subject to changeable or indeterminate reservations and rights of resumption, although the effect of the disposition depend upon the will of the donor. If, in the case of reservations and of a right of resumption, the donor do not exercise his right, the donee retains the full benefit of the gift to the exclusion of the heir of the donor. — N. 944, 946, 1086, 1089, 1093. — C. 782, 783.

825. Gifts by contract of marriage may be made subject to the charge of paying the debts due by the donor at the time of his death, whether they are determinate or not.

In universal gifts or gifts by general title of future property, or of present and future property together, this obligation falls on the donee without stipulation to that effect, for the whole or in proportion to what he receives. — N. 947, 1084. — C. 784.

826. The donee, however, after the death of the donor, in gifts made wholly in contemplation of death, and so long as he has not otherwise accepted, may free himself from the debts by renouncing the gift, after making an inventory and rendering an account, and by giving back any property of the donor remaining in his possession, or which he may have alienated or mixed up with his own.

827. In cumulative gifts of present and future property the donee may also, after the death of the donor

and so long as he has not accepted otherwise the gift in contemplation of death, free himself from the debts of the donor other than those for which he is liable under the gift *inter vivos*, by renouncing in the same manner the gift in contemplation of death, to restrict himself to the present property given him. — C. 1084.

828. The donee may also at the same time renounce the present property and free himself from all liability, by making an inventory, rendering an account, and returning the property given, in the manner provided in respect of gifts in general. — C. 798.

829. Notwithstanding the rule which excludes representation in the matter of legacies, gifts in contemplation of death made in favor of future consorts or of one of them, by their ascendants or other relations, or by strangers, are always, in the event of the donor surviving the consort benefited, presumed to be made in favor of the children to be born of the marriage, unless it is otherwise provided.

The gift becomes extinct if when the donor dies neither the consorts or consort benefited, nor any children of theirs be living. — N. 1082.

830. Gifts in contemplation of death made by contract of marriage, may be expressed in the terms of a gift, of an appointment of heir, of an assignment of dowry or dower, of a legacy, or in any other terms which indicate the intentions of the donor. — N. 967.

CHAPTER THIRD.

OF WILLS.[1]

SECTION I.

OF THE CAPACITY TO GIVE AND TO RECEIVE BY WILL.

831. Every person of full age, of sound intellect, and capable of alienating his property, may dispose of it freely by will, without distinction as to its origin or nature, either in favor of his consort, or of one or more of his children, or of any other person capable of acquiring and possessing, and without reserve, restriction, or limitation; saving the prohibitions, restrictions, and causes of nullity mentioned in this code, and all dispositions and conditions contrary to public order or good morals. — N. 901. — C. 13, 760.

832. The capacity of married women to dispose of property by will is established in the first book of this code, in the title *Of Marriage*. — N. 905. — C. 184.

833. Minors, [even of the age of twenty years and over,] whether emancipated or not, are incapable of be-

[1] *Vide* R. S. Q. 5550 et s. as to damages to immoveables.

queathing any part of their property. — N. 903.

834. Tutors and curators cannot bequeath property for the persons under their control, either alone or conjointly with such persons.

Persons interdicted for imbecility, insanity or madness cannot dispose of property by will. The will of a prodigal made subsequently to his interdiction may be confirmed or not according to circumstances and the nature of the dispositions.

A person to whom an adviser has been judicially appointed, whether at his own request or upon an application for his interdiction, may validly dispose of property by will.

835. The capacity of the testator is considered relatively to the time of making his will; nevertheless a will made previously to a condemnation from which civil death results, is without effect if the testator die while he is under the effect of such condemnation. — C. 36 § 2.

836. Corporations and persons in mortmain can only receive by will such property as they may legally possess. — C. 366.

837. Minors and interdicted or insane persons, though incapable of bequeathing, may receive by will.

838. The capacity to receive by will is considered relatively to the time of the death of the testator; in legacies the effect of which remains suspended after the death of the testator, whether in consequence of a condition, or in the case of a legacy to children not yet born, or of a substitution, this capacity is considered relatively to the time at which the right comes into effect.

Persons benefited by a will need not be in existence at the time of such will, nor be absolutely described or identified therein. It is sufficient that at the time of the death of the testator they be in existence, or that they be then conceived and subsequently born viable, and be clearly known to be the persons intended by the testator. Even in the case of suspended legacies, already referred to in this article, it suffices that the legatee be alive, or conceived, subject to the condition of being afterwards born viable, and that he prove to be the person indicated, at the time the legacy takes effect in his favor. — N. 906. — C. 608, 900 et s.

839. As regards testamentary dispositions, the legal presumptions of undue influence and want of will, arising from the relation of priest or minister, physician, advocate or attorney, in which the legatee stands towards the testator, have been destroyed by the introduction of the absolute freedom of disposing of prop-

erty by will. Presumptions in these cases are to be established as in all others. — C. 769.

SECTION II.

OF THE FORM OF WILLS.

840. Dispositions in contemplation of death made of a person's whole property, or of part thereof, in legal form by will or codicil, and whether they are expressed in the terms of an appointment of heir, of a gift, of a legacy, or in other terms indicating the intentions of the testator, take effect according to the rules hereinafter laid down, as universal legacies, legacies by general title, or as particular legacies. — N. 967, 1002. 8 7 2.

841. Two or more persons cannot make a will by one and the same act, whether in favor of third persons or in favor of one another. — N. 968.

842. Wills may be made:

1. In notarial or authentic form;

2. In the form required for holograph wills;

3. In writing and in presence of witnesses, in the form derived from the laws of England. — N. 969.

843. [Wills in notarial or authentic form are received before two notaries or before a notary and two witnesses; the testator, in their presence and with them signs the will or declares that he cannot do so, after it has been read to him by one of the notaries in presence of the other, or by the notary in presence of the witnesses. Mention is made in the will of the observance of the formalities.] — N. 971, 972, 973, 974. — C. 1208.

844. Authentic wills must be made as originals remaining with the notary.

The witnesses must be named and described in the will. They must be of the male sex, of full age, and must not be ~~civilly dead~~, nor ~~sentenced~~ to an infamous punishment. [Aliens may serve as witnesses.] The clerks and servants of the notaries cannot.

The date and place of its execution must be stated in the will. — N. 880, 975. — C. 36 § 4. - 9 Ed. VII ch. 38

845. [A will cannot be executed before notaries who are related or allied to the testator or to each other, in the direct line, or in the degree of brothers, uncles, or nephews. The witnesses however may be related or allied to the testator, to the notary, or to one another.]

846. [Legacies made in favor of the notaries or witnesses, or to the wife of any such notary or witness, or to any relation of such notary or witness in the first degree, are void, but do not annul the other provisions of the will.]

Testamentary executors

who are neither benefited nor compensated by the will may serve as witnesses to its execution. — N. 975.

847. Wills in authentic form cannot be dictated by signs.

[Deaf mutes and others who cannot declare their will by word of mouth, may do so, if they are sufficiently educated, by means of instructions written by themselves and handed to the notary, before or at the execution of the will.

Deaf mutes and such persons as cannot hear the will read, must read it themselves, and aloud, as regard those who are only deaf.

A written declaration that the deed contains the will of the testator and is prepared in accordance with his instructions, may be substituted for the same declaration by word of mouth, when it is required.

Mention must be made of the observance of these exceptional formalities and of their cause.

If the deaf mutes and others cannot avail themselves of the provisions of this article, they cannot make wills in the authentic form.]

848. Further and special provisions exist for the district of Gaspe, to remedy the want of notaries for the execution of wills as well as of other acts.

[Saving these provisions of a local nature, ministers of religion cannot replace notaries in the execution of wills; neither can they serve otherwise than as ordinary witnesses.]

849. Wills made in Lower Canada or elsewhere by military men in active service out of garrison, or by mariners during voyages, on board ship or in hospital, which would be valid in England as regards their form, are likewise valid in Lower Canada. — N. 981.

850. Holograph wills must be wholly written and signed by the testator, and require neither notaries nor witnesses. They are subject to no particular form.

Deaf mutes, who are sufficiently educated, may make holograph wills, in the same manner as other persons who know how to write. — N. 970.

851. Wills made in the form derived from the laws of England, [whether they affect moveable or immoveable property,] must be in writing and signed at the end with the signature or mark of the testator, made by himself or by another person for him in his presence and under his express direction, [which signature is then or subsequently acknowledged by the testator as having been subscribed by him to his will then produced, in presence of at least two competent witnesses to-

gether, who attest and sign the will immediately, in presence of the testator and at his request.]

[Females may serve as attesting witnesses and the rules concerning the competency of witnesses are the same in all other respects as for wills in authentic form.]

852. Deaf mutes capable of understanding the meaning of a will and the manner of making one, and all other persons, whether literate or not, whose infirmity has not rendered them incapable of so understanding or of expressing their intentions, may dispose of property by will in the form derived from the laws of England, provided their intention and the acknowledgment of their signature or mark are manifested in presence of witnesses.

853. In wills made in the last mentioned form, legacies made to any of the witnesses, or to the husband or wife of any such witness, or to any relations of such witness, [in the first degree,] are void, but do not annul the other provisions of the will.

The competency of testamentary executors to serve as witnesses to such wills, is subject to the same rules as in wills in authentic form.

854. In holograph wills, and in wills made in the form derived from the laws of England, whatever comes after the signature of the testator is looked upon as a new act, which in the former case must likewise be written and signed by the testator, or signed only in the latter. In this latter case the attestation of the witnesses must follow each signature of the testator, or come after the last as witnessing the whole of the will preceding such signature.

In wills made in either of the forms mentioned in this article, date and place need not be mentioned on pain of nullity. The judges or courts must decide in each case whether their absence creates any presumption against the will or renders uncertain any of its particular provisions.

The will need not be signed upon each page.

855. The formalities to which wills are subjected by the provisions of the present section must be observed on pain of nullity, unless there is some particular exception on the subject.

Nevertheless wills purporting to be made in one form, which are void as such in consequence of the inobservance of some formality, may be valid as made in another form, if they contain all the requisites of the latter. — N. 1101. — C. 1221. 893

SECTION III.

OF THE PROBATE AND PROOF OF WILLS.

856. The originals and legally certified copies of wills

made in authentic form make proof in the same manner as other authentic writings.

857. Holograph wills and those made in the form derived from the laws of England, must be presented for probate to the court exercising superior original jurisdiction in the district in which the deceased had his domicile, or, if he had none, in the district in which he died, or to one of the judges of such court, or to the prothonotary of the district. The court, or judge, or the prothonotary, receives the depositions in writing and under oath of witnesses competent to give evidence, and these depositions remain affixed to the original will, together with the judgment, if it have been rendered out of court, or a certified copy of it, if it have been rendered in court. Parties interested may then obtain certified copies of the will, the proof and the judgment, which copies are authentic and give effect to the will until it is set aside upon contestation.

If the original of the will be deposited with a notary, the court or judge, or the prothonotary, causes such original to be delivered up. — N. 1007. — P. 1367, 1430.

When any person, who has had and has ceased to have his domicile in the Province of Quebec, dies outside the said province, having made, outside the said province, a will which is valid under our laws, and such person leaves property in the Province of Quebec, such will may be proved in this province in any district in which he may have left property, as if it had been made and such person had had his domicile therein. — 2 Ed. VII, c. 37.

858. The heir of the deceased need not be summoned to the probate thus made of the will, except it is so ordered in particular cases.

The functionary who takes the probate takes cognizance of all that relates to the will.

The probate of wills does not prevent their contestation by persons interested.

859. The acknowledgment of a will by the heir or by any interested person has its effect against him, as regards his right to contest its validity subsequently, but does not prevent the probate and the depositing of the will with the prothonotary in the proper manner, in so far as concerns other parties interested.

860. When the minute or the original of a will has been lost or destroyed by a fortuitous event, after the death of the testator, or has been withheld without collusion, by an adversary or by a third party, the will may be proved in the manner provided in such case for other acts and writings in the title *Of Obligations*.

If the will have been destroyed or lost before the

death of the testator without the fact ever having come to his knowledge, it may be proved in the same manner as if the accident had occurred after his death.

If the testator knew of the destruction or loss of the will and did not provide for such destruction or loss, he is held to have revoked it, unless he subsequently manifests his intention of maintaining its provisions. — C. 892 § 3, 1233 § 6.

861. In cases where, in conformity with the preceding article, a non-produced will may be judicially proved, a probate of it may also be obtained, upon petition to that effect and positive proof both of the facts which justify such a proceeding and of the contents of the will. In such case probate of the will is held to be established according to the proof deemed sufficient, and to whatever modifications may be found in the judgment.

862. The sufficiency of one witness applies to the probate and proof of wills, even of those lost or destroyed, if the court or judge be satisfied. — P. 312.

SECTION IV.

OF LEGACIES.

§ 1. — OF LEGACIES IN GENERAL.

863. Testamentary dispositions of property constitute legacies, either universal, or by general title, or by particular title. — N. 1002, 1004. — C. 873.

864. The property of a deceased person which is not disposed of by will, or concerning which the dispositions of his will are wholly without effect, remains in his abintestate succession, and passes to his lawful heirs. — C. 597.

865. When a legacy made subject to another legacy lapses, from a cause dependent upon the legatee, the legacy to which it is thus subject does not therefore lapse, but is deemed to form a distinct disposition, charged upon the heir or legatee to whom the lapsed legacy accrues. — C. 900 et s.

866. The legatee may always repudiate the legacy so long as he has not accepted it. The acceptance may be either express or implied. Acceptance may be implied from the same acts as in abintestate successions. The right to accept a legacy, not previously repudiated, passes to the heirs and other legal representatives of the legatee, in the same manner as heritable rights derived from the law alone. — C. 645 et s.

867. Tutors and curators may accept legacies, subject to the same restrictions as in the case of abintestate successions.

The capacity of minors and of persons interdicted for prodigality, to accept legacies for themselves, is governed

by the rules established for the acceptance of successions. — C. 301, 643.

868. Accretion takes place in favor of the legatees in the case of lapsed legacies, when such legacies are made in favor of several persons jointly.

They are held to be so made when they are created by one and the same disposition and the testator has not assigned the share of each colegatee in the thing bequeathed. Directions given to divide the thing jointly disposed of into equal aliquot shares, do not prevent accretion from taking place.

The legacy is also presumed to be made jointly when a thing which cannot be divided without deterioration is bequeathed by the same act to several persons separately.

The right to accretion applies also to gifts *inter vivos* made in favor of several persons jointly, when some of the donees do not accept. — N. 1044, 1045. — C. 900 et s., 964.

869. A testator may name legatees who shall be merely fiduciary or simply trustees for charitable or other lawful purposes within the limits permitted by law; he may also deliver over his property for the same objects to his testamentary executors, or effect such purposes by means of charges imposed upon his heirs or legatees.

870. Payment made in good faith to the ostensible heir, or to a legatee who is in possession of the succession, is valid against the heirs or legatees who present themselves afterwards; saving the recourse of the latter against him who has received without a right to do so. — C. 1145.

871. Fruits and interest arising from the thing bequeathed accrue to the benefit of the legatee from the time of the death of the testator, when the latter has expressly declared in the will his intention to that effect.

Life-rents or pensions, bequeathed by way of maintenance, also begin from the date of the testator's death.

In all other cases, fruits and interest do not accrue until they are judicially demanded, [or until the debtor of the legacy is put in default.] — N. 1015.

872. The rules concerning legacies and the presumptions of the testator's intention, as well as the meaning ascribed to certain terms, give way to the formal or otherwise sufficient expression of such intention, given in another sense or with a view to different effects. The testator may derogate from these rules in all that is not contrary to public order, to good morals, to any law con-

taining a prohibition or some other applicable declaration of nullity, or to the rights of creditors and third persons. — C. 13.

§ 2. — OF UNIVERSAL LEGACIES AND LEGACIES BY GENERAL TITLE.

873. Universal legacies are testamentary dispositions by which the testator gives to one or to several persons the whole of the property he leaves at his death.

Legacies are only by general title when the testator bequeaths an aliquot part of his property, as a half, a third, or a universality, such as the whole of his moveable or immoveable property, or the whole of the private property excluded from the matrimonial community, or an aliquot part of any such whole.

All other legacies are by particular title.

The exception of particular things, whatever may be their number or value, does not destroy the character of universal legacies, or of legacies by general title. — N. 1003, 1010.

874. The legatee has the same delays as the heir to make an inventory and to deliberate. If he have not assumed his quality within the delays, and be afterwards sued for the debts or charges attached to his legacy, he is not freed from the costs by his renunciation, any more than the heir would be. — C. 664 et s. — P. 177 § 1.

875. The liability of a universal legatee, or of a legatee by general title, or by particular title, for the debts and hypothecs, is explained in the title *Of Successions*, and, in certain respects, in the present section, and also in the title *Of Usufruct.* — C. 472 et s., 735 et s.

876. The legatee of a usufruct bequeathed as a universal legacy, or as a legacy by general title, is personally liable towards the creditors for the debts of the succession, even for the principal, in proportion to what he receives; he is hypothecarily liable for whatever claims affect the immoveables included in his share, as any other legatee by the same title, and with the same recourse. The valuation is made proportionately between him and the proprietor in the manner and according to the rules set forth in article 474. — C. 472 et s.

877. A testator may change, among his heirs and legatees, the manner and proportions in which the law holds them liable for the payment of the debts and legacies, without prejudice to the personal or hypothecary action of the creditors against those who are legally subject to the right claimed, and saving the recourse

of the latter against those upon whom the testator imposed the obligation.

878. [Universal legatees and legatees by general title cannot, after acceptance, free themselves from personal liability for the debts and legacies imposed upon them by law or by the will, without having obtained benefit of inventory; they are in this respect, and in all that concerns their administration, the rendering of their account and their discharge from liability, subject to the same rules, as the heir, and to the obligation of registering.

Legatees by particular title upon whom the will imposes debts and charges of uncertain extent, may, in the same manner as the heir and universal legatee, accept only under benefit of inventory.] — C. 660 et s. — P. 1405 et s.

879. The creditors of a succession have a right to the separation of property against a legatee liable for a debt, in the same manner as against an heir, for the portion in which he is liable. — C. 743, 1990, 2106.

§ 3. — OF LEGACIES BY PARTICULAR TITLE.

880. The debts of a testator must in all cases be paid in preference to his legacies.

Particular legacies are paid by the heirs, or universal legatees, or legatees by general title, each in the proportion for which he is liable, as in the contribution to the debts, and the legatee has a right to demand the separation of property.

If the legacy be imposed upon one particular heir or legatee, the personal action of the legatee by particular title does not extend to the others.

The right to a legacy does not carry with it a hypothec upon the property of the succession, but the testator, whatever may be the form of the will, may secure it by a special hypothecation requiring, as regards the rights of third parties, that the will be registered. — N. 1017.—C. 472, 743, 2110 et s.

881. [The bequest of a thing which does not belong to the testator, whether he was aware or not of another's right to it, is void, even when the thing belongs to the heir or legatee charged with the payment of it.

The legacy is however valid, and is equivalent to the charge of procuring the thing or of paying its value, if such appear to have been the intention of the testator. In such case, if the thing bequeathed belong to the heir or the legatee charged with the payment of it, whether the fact was known or not to the testator, the particular legatee is seized of the ownership of his legacy. — N. 1021.

882. [If the thing bequeathed belonged to the testator for a part only, he is presumed to have bequeathed only the part which belonged to him, even when the remainder belongs to the heir or principal legatee, unless his intention to the contrary is manifest.]

The same rule applies to the bequest made by one of the consorts of a thing belonging to the community; saving the right of the legatee to the whole of the thing bequeathed under the circumstances enumerated in the title concerning marriage covenants, and generally in the case of the following article. — C. 1293.

883. [If the testator since the making of the will have become, wholly or in part, owner of the thing bequeathed, the legacy is valid as regards whatever remains in his succession, notwithstanding the provisions contained in the preceding article; excepting the case in which the thing remains in the succession only by reason of the nullity of a subsequent voluntary alienation of it by the testator.] — C. 897.

884. When a legacy by particular title comprises a universality of assets and liabilities, as for example a certain succession, the legatee of such universality is held personally and alone for the debts connected with it, without prejudice to the rights of the creditors against the heirs and universal legatees or legatees by general title, who have their recourse against the particular legatee.

885. In the case of insufficiency of the property of the succession or of the heir or legatee liable for the payment, the legacies entitled to preference are paid first, and the remainder is then divided rateably among the other legatees in proportion to the value of their respective legacies. Legatees of a certain and determinate object take it without being bound to contribute to the payment of the other legacies which have no preference over theirs. — N. 927, 928.

886. To obtain the reduction of particular legacies, the creditors must first have discussed the heir or legatee who is personally bound, and have availed themselves in time of the right to separation of property.

The creditors exercise this reduction against each of the particular legatees for a share only, in proportion to the value of his legacy, but the particular legatees may free themselves by giving up the particular legacies or their value. — N. 926.

887. Creditors of the succession, in the case of reduction of particular legacies, have a preferable right to the thing bequeathed, over the creditors of the legatee, as in the case of separation of property.

A particular legatee suffering such reduction has his recourse against the heirs or legatees who are personally liable, and is substituted by law in all the rights of the creditor thus paid.

888. When an immoveable bequeathed has been increased by further acquisitions of property, the property thus acquired, even if it be contiguous, is not deemed to form part of the legacy, unless from its destination and the circumstances it may be presumed that the testator intended it to form a mere dependency, constituting with the immoveable bequeathed but one and the same property.

Buildings, embellishments and improvements are deemed to be adjuncts of the thing bequeathed. — N. 1018, 1019.

889. [If before or since the will, the immoveable bequeathed have been hypothecated for a debt of the testator remaining still due, or even for the debt of a third person whether it was known or not to the testator, the heir, or the universal legatee, or the legatee by general title is not bound to discharge the hypothec, unless he is obliged to do so by the will.]

A usufruct established upon the thing bequeathed is also borne without recourse by the particular legatee. The same rule applies to servitudes.

If however the hypothecary debt of a third person, of which the testator was ignorant, affect at the same time the particular legacy and the property remaining in the succession, the benefit of division may reciprocally be claimed. — N. 1020. — C. 741.

890. A legacy made in favor of a creditor is not deemed to be in compensation of his claim, nor that in favor of a servant in compensation of his wages. — N. 1023.

§ 4. — OF THE SEIZIN OF LEGATEES.

891. Legatees by whatever title, are, by the death of the testator, or by the event which gives effect to the legacy, seized of the right to the thing bequeathed, in the condition in which it then is, together with all its necessary dependencies, and with the right to obtain payment, and to prosecute all claims resulting from the legacy, without being obliged to obtain legal delivery.—N. 1004, 1005, 1006, 1011, 1014.

SECTION V.

OF THE REVOCATION AND LAPSE OF WILLS AND LEGACIES.

892. Wills and legacies cannot be revoked by the testator except:

1. By means of a subsequent will revoking them ei-

ther expressly or by the nature of its dispositions;

2. By means of a notarial or other written act, by which a change of intention is expressly stated;

3. By means of the destruction, tearing or erasure of the holograph will, or of that made in the form derived from the laws of England, deliberately effected by him or by his order, with the intention of revoking it; and in some cases by reason of the destruction or loss of the will by a fortuitous event becoming known to him, as explained in the third section of the present chapter;

4. By his alienation of the thing bequeathed. — N. 1035. — C. 756, 860.

893. The revocation of a will or of a legacy may also be demanded:

1. On the ground of the complicity of the legatee in the death of the testator, or by reason of grievous injury done to his memory, in the same manner as in the case of legal succession, or, if the legatee hindered the revocation or modification of the will;

2. By reason of the resolutive condition;

Without prejudice to the causes for which the validity of the will or legacy may be impugned.

The subsequent birth of children to the testator does not affect a revocation.

[Enmity springing up between him and the legatee does not establish a presumption of revocation.] — N. 1046, 1047. — C. 610.

894. Subsequent wills which do not revoke the preceding ones in an express manner, annul only such dispositions therein as are inconsistent with or contrary to those contained in the later wills. — N. 1036.

895. A revocation contained in a subsequent will retains its full effect, although such will should remain inoperative by the reason of the incapacity of the legatee or of his refusal to accept.

A revocation contained in a will which is void by reason of informality, is also void. — N. 1037. — C. 1221.

896. In the absence of express dispositions, the circumstances and the indications of the intention of the testator determine whether, upon the revocation of a will which revokes another will, the former will revives.

897. [Every alienation by the testator of the right of ownership in the thing bequeathed, even in a case of necessity, or by forced means, or with right of redemption reserved, or by exchange, carries with it, unless he has otherwise provided, a revocation of the will or legacy for all that has been thus disposed of, even though, if it were voluntary, the alienation be void.]

The revocation subsists although the thing should afterwards have returned into

the hands of the testator, [unless he appears to have intended the contrary.] — N. 1038. — C. 883.

898. A person cannot, otherwise than by the effect of gifts in contemplation of death made by contract of marriage, forego his right to dispose of his property by will or by gift in contemplation of death, or to revoke his testamentary dispositions. Nor can a person subject the validity of any future will to formalities, expressions or signs not required by law, or to other derogatory clauses. — C. 823.

899. [Heirs cannot be excluded from successions, unless the act excluding them is clothed with all the formalities of a will.]

900. Every testamentary disposition lapses if the person in whose favor it is made do not survive the testator.— N. 1039. — C. 838, 865, 868.

901. Every testamentary disposition made under a condition which depends on an uncertain event, lapses if the legatee die before the fulfilment of the condition. — N. 1040.

902. Conditions which are intended by the testator to suspend only the execution of a disposition, do not prevent the legatee from having an acquired right transmissible to his heirs. — N. 1041.

903. A legacy lapses if the thing bequeathed perish totally during the lifetime of the testator.

The loss of a thing bequeathed which happens after the death of the testator falls upon the legatee, except cases wherein the heir or other holder may be responsible according to the rules applicable generally to things which form the subject of obligations. — N. 1042.

904. A testamentary disposition lapses when the legatee repudiates it or is incapable of receiving under it. — N. 1043.

SECTION VI.

OF TESTAMENTARY EXECUTORS.

905. A testator may name one or more testamentary executors, [or provide for the manner in which they shall be appointed; he may also provide for their successive replacement.]

Heirs or legatees may lawfully be appointed testamentary executors.

Creditors of the succession may be executors without forfeiting their claims.

Single women or widows may also be charged with the execution of wills.

The courts and judges cannot appoint nor replace testamentary executors, [except in the cases specified in article 924.]

If there be no testamentary executors, and none have been appointed in the manner in which they may be, the execution of the will de-

volves entirely upon the heir or the legatee who receives the succession. — N. 1025. — C. 869, 923.

906. Married women cannot accept testamentary executorship without the consent of their husbands.

Single women and widows who marry while they are testamentary executors, do not forfeit their office by mere operation of law, even though they have entered into community of property with their husbands, but they require the consent of the latter to continue the exercise of such office.

A testamentary executrix separated as to property from her husband, either by contract of marriage or by judgment, may, if he refuse the consent necessary for her to accept or to exercise the office, obtain judicial authorization as in the cases provided for in article 178. — N. 1029. — C. 177.

907. Minors cannot act as testamentary executors, even with the authorization of their tutors.

Nevertheless emancipated minors may do so, provided the executorships be of small importance in proportion to their means. — N. 1030.

908. The incapacity of corporations to execute wills is declared in the first book.

Persons who compose a corporation, or such persons and their successors, may be appointed to execute wills in ity, and may act in that behalf if such appear to have been the intention of the testator, although he may have designated them solely by the appellation which belongs to them in their corporate capacity.

The same rule applies to persons designated by the title which belongs to their office or position, and to their successors. — C. 365.

909. Subject to the preceding provisions, persons who cannot obligate themselves cannot be testamentary executors. — N. 1028.

910. No person can be compelled to accept the office of testamentary executor.

Its duties are performed gratuitously, unless the testator has provided for their remuneration.

If a legacy made in favor of a testamentary executor have no other cause than such remuneration, and he do not accept the office, the legacy lapses by reason of the failure of the condition.

If he accept the legacy thus made, he is presumed to have accepted the executorship.

Testamentary executors are not bound to be sworn; nor to give security, unless they have accepted with that condition.

They are not liable to coercive imprisonment. — C. 981 et s. — P. 833 § 6.

cutor who has accepted the office cannot renounce it [without the authorization of the court or of a judge, which may be granted for sufficient cause; the heirs and legatees and other executors, if there be any, being present, or having been duly called.

Difference of opinion between an executor and the majority of his co-executors, as to the execution of the will, may constitute a sufficient cause.]

912. If several testamentary executors have been appointed, and some of them only, or even one of them alone, have accepted, they or he may act alone, unless the testator has otherwise ordained.

In like manner, if several have accepted, but some or one only of them survive, or retain the office, they or he may act alone until the others are replaced, in the cases admitting of it, unless the testator has expressed himself to the contrary.

913. If there be several joint testamentary executors, with the same duties to perform, they have all equal powers and must act together, unless the testator has otherwise ordained.

[Nevertheless if any of them be absent those who are in the place may perform alone acts of a conservatory nature and others requiring dispatch.]

The executors may also act generally as attorneys for each other, unless the intention of the testator appears to the contrary, and subject to the responsibility of the one who grants the power. The executors cannot delegate generally the execution of the will to others than their co-executors, but they may be represented by attorney for determinate acts.

Executors exercising these joint powers, are jointly and severally bound to render one and the same account, unless the testator has divided their functions and each of them has kept within the scope assigned to him.

They are responsible only each for his share for the property of which they took possession in their joint capacity, and for the payment of the balance due, saving the distinct liability of such as are authorized to act separately. — N. 1033.

914. The expenses incurred by the testamentary executor in the fulfilment of his duties are borne by the succession. — N. 1034.

915. A testamentary executor may, before the probate of the will, perform acts of a conservatory nature or which require dispatch, provided he obtains such probate without delay, and furnishes proof of it when required.

916. The testator may limit the obligation incum-

bent upon the executor of making an inventory and rendering an account of his administration, and even free him from it entirely.

This discharge does not release him from the payment of what remains in his hands, unless the testator intended to leave him the disposition of the property without responsibility, or to constitute him legatee, or that the terms of the will otherwise import the release from payment.

917. [If, having accepted, a testamentary executor refuse or neglect to act, or dissipate or waste the property, or otherwise exercise his functions in such a manner as would justify the dismissal of a tutor, or if he have become incapable of fulfilling the duties of his office, he may be removed by the court having jurisdiction.]

918. Testamentary executors, for the purposes of the execution of the will, are seized as legal depositaries of the moveable property of the succession, and may claim possession of it even against the heir or legatee.

This seizin lasts for a year and a day reckoning from the death of the testator, or from the time when the executor was no longer prevented from taking possession.

When his duties are at an end, the testamentary executor must render an account to the heir or legatee who receives the succession, and pay him over the balance remaining in his hands. — N. 1026, 1031.

919. The testamentary executor must cause an inventory to be made after notifying the heirs, legatees and other interested persons to be present. He may however perform immediately all acts of a conservatory nature or which require despatch.

He attends to the obsequies of the deceased.

He procures the probate of the will and its registration when necessary.

If the validity of the will be contested he may become a party to support it.

He pays the debts and discharges the particular legacies, with the consent of the heir or of the legatee who receives the succession, or, after calling in such heir or legatee, with the authorization of the court.

In the case of insufficiency of moneys for the execution of the will, he may, with the same consent, or with the same authorization, sell moveable property of the succession to the amount required. The heir or legatee may however prevent such sale by tendering the amount required for the execution of the will.

The testamentary executor may receive the debts due and may sue for their recovery.

He may be sued for whatever falls within the scope of his duties, saving his right to call in the heir or the legatee. — N. 1031. — C. 857 et s. — P. 1364, 1387 et s., 1430.

920. The powers of a testamentary executor do not pass by mere operation of law to his heirs or other successors, who are however bound to render an account of his administration, and of whatever they may themselves have actually administered. — N. 1032.

921. The testator may modify, restrict or extend the powers, the obligations and the seizin of the testamentary executor, and the duration of his functions. He may constitute the testamentary executor an administrator of his property, in whole or in part, and may even give him the power to alienate it with or without the intervention of the heir or legatee, in the manner and for the purposes determined by himself.

922. A testator cannot appoint tutors to minors, nor curators to persons requiring their assistance or to substitutions.

If he have assumed to appoint persons to such offices, the specific powers given to the persons thus named, and which he might have conferred upon them without such designation, may however be exercised by them as executors and administrators of the will.

The testator may oblige the heir or the legatee, in certain cases, to take the advice or to obtain the sanction of the testamentary executors, or of other persons. — C. 249.

923. The testator may provide for the replacing of testamentary executors and administrators, even successively and for as long a time as the execution of the will shall last, whether by directly naming and designating those who shall replace them himself, or by giving them power to appoint substitutes, or by indicating some other mode to be followed, not contrary to law. — C. 905.

924. [If the testator desire that the appointment or the replacement should be made by the courts or judges, the powers necessary for such purpose may be exercised judicially, the heirs and legatees interested being first duly notified.

When testamentary executors and administrators have been named by the will, and, in consequence of their refusal to accept, or of their powers having ceased without their being replaced, or of unforeseen circumstances, none of them remain, and it is impossible to replace them under the terms of the will, the judges and the courts may likewise exercise the powers necessary to do so,

provided it appears that the testator intended the execution and administration of the will to continue independently of the heir or of the legatee.] — C. 905.

CHAPTER FOURTH.

OF SUBSTITUTIONS.

SECTION I.

RULES CONCERNING THE NATURE AND FORMS OF SUBSTITUTIONS.

925. There are two kinds of substitutions:

Vulgar substitutions is that by which a person is called to take the benefit of a disposition in the event of its failure in respect of the person in whose favor it is first made.

Fiduciary substitutions is that in which the person receiving the thing is charged to deliver it over to another either at his death or at some other time.

Substitution takes its effect by operation of law at the time fixed upon, without the necessity of any delivery or other act on the part of the person charged to deliver over. — N. 896.

926. Fiduciary substitutions include vulgar substitutions without any expressions to that effect being necessary.

Whenever the vulgar is expressly joined to the fiduciary, to meet particular cases, the substitution is called compendious.

When the term *substitution* is used alone, it applies to the fiduciary, with the vulgar attached to it, unless the nature or terms of the disposition indicate the vulgar alone. — C. 933.

927. The person charged to deliver over is called the institute, and the one who is entitled to take after him is called the substitute. When there are several degrees in the substitution, the substitute who receives under the obligation of delivering over becomes in turn an institute with regard to the substitute who comes next.

928. A substitution may exist although the term *usufruct* be used to express the right of the institute. In general the whole tenor of the act and the intention which it sufficiently expresses are considered, rather than the ordinary acceptation of particular words, in order to determine whether there is substitution or not. — N. 896, 1048. — C. 443.

929. Substitutions may be created by gifts *inter vivos*, made in contracts of marriage or otherwise, by gifts in contemplation of death made in contracts of marriage, or by will.

The capacity of the persons is governed in each case by the nature of the act.

The disposition which

creates the substitution may be conditional like any other gift or legacy.

Substitutions may be appended to dispositions that are either universal, or by general title, or by particular title.

The substitute need not be present at the gift *inter vivos* which creates the substitution in his favor; he need not even have been born nor conceived at the time of the act. — C. 772.

930. Substitutions made by contract of marriage are irrevocable like gifts made in the same manner.

Substitutions made by other gifts *inter vivos* may be revoked by the donor, notwithstanding the acceptance by the institute for himself, [so long as they have not opened; unless they have been accepted by the substitute, or in his behalf, either formally or in an equivalent manner, as in gifts in general.]

The acceptance made for themselves, by institutes, even when they are strangers to the donor, also renders irrevocable the substitution in favor of their children born or to be born.

The revocation of a substitution, when it is allowed, cannot prejudice the institute nor his heirs by depriving them of the possible benefit of the lapse of the substitution, or otherwise. On the contrary, and although the substitute might have received but for the revocation, such revocation goes to the profit of the institute and not of the grantor, unless the latter has made a reservation to that effect in the act creating the substitution.

Substitutions by will may be revoked like all other testamentary dispositions.

931. Moveable property as well as immoveables may be the subject of substitutions. Unless corporeal moveables are subjected to a different disposition they must be publicly sold and their price be invested for the purposes of the substitution.

Ready money must also be invested in the same manner.

The investment must in all cases be made in the name of the substitution. — N. 1062, 1063, 1064, 1065. — C. 943, 953 § 5, 981.

932. [Substitutions created by will or by gift *inter vivos* cannot extend to more than two degrees exclusive of the institute.] — N. 1049.

933. The rules concerning legacies in general also govern in matters of substitution, in so far as they are applicable, save in excepted cases.

Substitutions by gift *inter vivos*, like those created by will, are subject to the same rules as legacies, as to their opening, and after they have opened. Whatever relates to the form of the act, and the acceptance and prehension of

the property by the first donee, remains subject to the rules which belong to gifts *inter vivos*.

An acceptance by the first institute under the gift is sufficient for the substitutes, if they avail themselves of the disposition, and if it have not been validly revoked.

If the gift *inter vivos* lapse in consequence of repudiation or for want of acceptance on the part of the first donee, fiduciary substitution does not take place, nor does the vulgar unless the donor has so provided.

934. The testator may impose a substitution either upon the donee or the legatee whom he benefits, or upon his heir on account of what he leaves him as such. — N. 1048, 1049.

935. The donor in an act *inter vivos* cannot subsequently create a substitution of the property he has given, even in favor of the children of the donee.

Nor can he reserve the right of doing so, except it be in a contract of marriage. The grantor may however reserve to himself, in all cases, the right to determine the proportions in which the substitutes shall receive.

Nevertheless the donor or testator may, in a new gift *inter vivos* of other property to the same person, or in a will, create a substitution of the property given unconditionally in the first gift; such a substitution takes effect only by virtue of the acceptance of the subsequent disposition of which it forms a condition, and does not prejudice the rights acquired by third parties. — N. 1052.

936. Children who are not called to the substitution, but are merely named in the condition without being charged to deliver over to others, are not deemed to be included in the disposition.

937. In substitutions, as in other legacies, representation does not take place, unless the testator has ordained that the property shall pass in the order of legitimate successions, or his intention to that effect is otherwise manifest. — N. 1053.

SECTION II.

OF THE REGISTRATION OF SUBSTITUTIONS.

938. Besides the effect of registration or of the omission to register, as regards gifts and wills respectively as such, any of these acts containing fiduciary substitutions, either in respect of moveable or immoveable property, must be registered in the interest of the substitutes and of third parties.

Substitutions in the direct line in contracts of marriage, and those in respect of corporeal moveables accompanied with actual delivery to the first donee are not exempt from registration.

The failure to register sub-

titutions operates in favor of third parties, to the prejudice of the substitutes, though the latter be minors, or interdicted, or not yet born, and even against married women, and they cannot be relieved from it; saving their recourse against those whose duty it was to procure the registration. — N. 1069. — C. 807, 808, 2108, 2109.

939. The want of registration may be invoked against the substitution by all parties interested who are not within some particular exception. — N. 941, 1070. — C. 942.

940. Neither the grantor, nor the institute, nor their heirs or universal legatees, can avail themselves of the want of registration, but it may be invoked by those who have acquired from them in good faith by a particular title, whether onerous or gratuitous, and by their creditors. — N. 941, 1070, 1072.

941. The registration of acts containing substitutions takes the place of their inscription in the offices of the courts, and of their judicial publication, which formalities are abolished.

Such registration must be effected within six months from the date of the gift *inter vivos*, or from the death of the testator. The effect of the registration of gifts *inter vivos* within such delay, as regards third parties whose claims are registered, is explained in the title *Of Registration of real rights*. As regards all other parties, and in cases of substitution by will, registration within the same delays has a retroactive effect to the time of the gift, or to that of the death. If it take place subsequently, its effect commences only from its date.

Nevertheless the special delays established, as regards wills, for the cases where the testator dies beyond Canada, or where the deed has been concealed, apply with equal retroactive effect to the substitution contained in the will in such cases.

Substitutions affecting immoveables must be registered in the registry office of the division in which they are situated, and also, when they are created by gifts made in contemplation of death, or by will, at the registry office of the domicile of the grantor.

If it affect moveable property, it must be registered in the registry office of the division of which the donor at the time of the donation, or the testator at the time of his death, had his domicile.— N. 1069. — C. 804, 2083, 2092, 2110 et s.

942. The following persons are bound to register substitutions, when they are aware of their existence, namely:

1. The institute who accepts the gift or legacy.

2. The substitute of age, who is himself charged to deliver over.

3. Tutors or curators of the institute or of the substitutes, and the curator to the substitution.

4. The husband for his wife who is so bound.

Those who are bound to effect the registration of the substitution, and their heirs and universal legatees, or legatees by general title, cannot avail themselves of the want of such registration.

The institute who has neglected to register is moreover subject to lose the fruits, as in the case of neglect to have an inventory made. — N. 941, 1069, 1070, 1072, 1073. — C. 939.

943. The acts and declarations of investment of the moneys belonging to the substitution must also be registered within six months from their date.

SECTION III.

OF SUBSTITUTIONS BEFORE THEIR OPENING.

944. The institute holds the property as proprietor, subject to the obligation of delivering over, and without prejudice to the rights of the substitute.

945. All substitutes, born and unborn, are represented in all inventories and partitions by a curator to the substitution, appointed in the manner established as regards tutors. The curator to the substitution attends to the interest of such substitutes and represents them in all cases in which his intervention is requisite or proper.

The institute who neglects to demand this nomination may be declared to have forfeited in favor of the substitute the benefit of the disposition.

All persons who are competent to demand the appointment of a tutor to a minor of the same family, may also demand the nomination of a curator to the substitution. — R. S. Q., art. 5802. — N. 1055, 1056, 1057. — C. 250 et s., 347 et s., 922. — P. 1331, 1340.

946. The institute is bound, within three months to have an inventory made at his own expense of the property comprised in the substitution, as well as a valuation of the moveable effects, if they have not already been included as such and valued likewise in a general inventory of the property of the succession, made by other persons. All persons interested must either be present or have been notified to that effect.

In default of the institute, the substitutes, their tutors or curators, and the curator to the substitution have the right, and are bound, except the substitutes when they are not obliged to deliver over, to cause such inventory to be

made at the expense of the institute, after notifying him, and all others interested, to be present.

So long as the institute fails to have such inventory and valuation made he is deprived of the fruits. — N. 1058, 1059, 1060. — P. 1387 et s.

947. The institute performs all the acts that are necessary for the preservation of the property.

He is liable on his own account for all rights, rents, charges and arrears falling due within his time.

He makes all payments, receives moneys due and reimbursements, invests capital sums and exercises before the courts all the powers necessary for these purposes.

For the same purposes he makes the necessary advances for law expenses and other necessary disbursements of an extraordinary nature, the amount of which is refunded to him or his heirs, either in whole or in part, according to what appears to be equitable at the time when he delivers over.

If he have redeemed rents or paid the principal of debts due, without having been charged to do so, he and his heirs have a right to be paid back, at the same time, the moneys so disbursed, without interest.

If such redemption or payment have been made in anticipation without sufficient reason, and would not have been demandable at the time of the opening, the substitute need not, until the time when they would have become exigible, do more than pay the rents or interest. — N. 1066, 1067. — P. 946.

948. The rules concerning indivision set forth in the title *Of Successions*, apply equally to substitutions, save the provisional nature of the partition while they last.

In the case of forced sale of immoveables, or any other lawful alienation of the property comprised in a substitution, and in the case of redemption of rents or capital sums, the institute, or the testamentary executors authorized to administer in his place, are bound to invest the price, in the interest of the substitutes, with the consent of all parties interested; or upon the refusal of such parties, the investment is made under judicial authorization, obtained after due notice to them being given. N. 1065. — C. 943, 9810 et s.

949. The obligation of delivering over the property of the substitution in an undiminished state, and the nullity of all his acts in contravention thereof, do not prevent the institute from hypothecating or alienating such property, without prejudice to the rights of the substitute, who takes it free from all hypothecs, charges or servitudes, and even from the continuation of lease, unless his right has been pres-

cribed according to the rules contained in the title *Of Prescription*, or unless a third party has a right to avail himself of the want of registration of the substitution. — C. 2205, 2207.

950. Forced sales under execution, or by licitation, are likewise dissolved in favor of the substitute by the opening of the substitution, if it have been registered, unless the sale comes within one of the cases mentioned in article 953. — P. 781, 785.

951. The institute cannot compound as to the ownership of the property in such a manner as to bind the substitute, except in cases of necessity, when the interests of the latter are concerned, and after being judicially authorized in the manner required for the sale of property belonging to minors. — C. 351. — P. 1341 et s.

952. The grantor may indefinitely allow the alienation of the property of the substitution, which takes place, in such case, only when the alienation is not made.

953. The final alienation of the property of a substitution may moreover be validly effected while the substitution lasts:

1. By expropriation for public purposes or in virtue of some special law;

2. By forced judicial sale on account of a debt due by the grantor, or of hypothecary claims anterior to his possession. The obligation of the institute to discharge the debt or hypothec does not prevent the sale from being valid in this case against the substitution, but the institute is liable towards the substitute for all damages;

3. With the consent of all the substitutes, when they are in the exercise of their rights. If some of them only have consented, the alienation holds good as regards them, without prejudicing the others;

4. When the substitute as heir or legatee of the institute is answerable to the purchaser for the eviction;

5. As regard moveable things sold in conformity with section 1 of this chapter. — C. 931, 1590.

953*a*. The substituted property may likewise be definitively alienated during the substitution, on the following conditions:

1. Such alienation must be to the advantage of the institute and of the substitute.

2. The institute and curator must be authorized by the court, by observing the formalities prescribed in articles 1341 to 1361, inclusively, of the Code of Civil Procedure.

3. The purchase price must be employed in accordance with the judge's order, either in paying the debts of the substitution or upon immoveable property in this

Province, or on first privilege or first hypothec upon immoveable property in this Province, valued at not more than three-fifths of the municipal valuation, which valuation must be confirmed by an expert.

4. If the purchase price be employed at the same time as the sale of the substituted immoveable, the purchaser of the property is bound to see to its employment, and he shall pay the purchase price, as the case may be, into the hands of the vendor of the immoveable purchased to acquit the purchase price of the latter or into the hands of the borrower, and this employment and the judge's order must be mentioned in the acquittance of the purchase price of the substituted immoveable, in order to render the said acquittance valid.

5. If the employment of the purchase price be not made at the time, the said purchase price shall be deposited by the purchaser, as a judicial deposit, in the hands of the prothonotary of the Superior Court of the district where the immoveable sold is situated, and the prothonotary shall hold the deposit subject to the employment thereof under the provisions of this article.

6. The immoveables acquired by the institute or the purchase price invested in mortgage, as the case may be, are subject to the substitution in the same manner as the immoveable sold.

7. The reimbursement of any capital loaned according to the provisions hereof shall be made to the prothonotary of the Superior Court of the district where the substituted property was situated, who shall receive such capital as a judicial deposit and cannot pay it out except on a judge's order authorizing a new investment, unless such new investment has been authorized by the judge before the reimbursement took place.

8. In the case of judicial deposit, the acquittance given by the prothonotary shall be final and shall authorize the registrar to effect any necessary radiation.

9. The costs incurred for the sale and investment of the purchase price shall be borne by the institute." — 61 V., c. 44, s. 1.

954. [The wife of the institute has no subsidiary recourse against the property of substitutions for the securing of her dower or her dowry.] — N. 1054.

955. If the institute deteriorate, waste or dissipate the property, he may be compelled to give security or to allow the substitute to be put in possession of it as a sequestator. — C. 1824.

956. The substitute may, while the substitution lasts, dispose by act *inter vivos* or

by will, of his eventual right to the property of the substitution, subject to the contingency of its lapsing, and to its ulterior effects if it continue beyond him.

The substitute or his representatives may, before the opening, perform all acts of a conservatory nature connected with his eventual right, whether against the institute or against third persons. — C. 2207. — P. 946.

957. The substitute who dies before the opening of the substitution in his favor, or whose right to it has otherwise lapsed, does not transmit such right to his heirs, any more than in the case of any other unaccrued legacy. — C. 901.

958. As regards the repairs which the institute is bound to make, and the reimbursements he or his heirs may claim for the improvements he has made, the same rules apply as are laid down for the emphyteutic lessee in articles 581 and 582.

959. Judgments obtained by third parties against the institute cannot be impugned by the substitutes, on the ground of the substitution, if, in the same suits, they, or their tutors or curators, or the curator to the substitution, besides the executors and administrators of the will, if there were any in function, were impleaded.

If the substitutes, or those who may be thus impleaded in their place, have not been included in the suit, such judgments may be impugned, whether the institute has or has not contested the action brought against him.

960. The institute may, but without prejudice to his creditors, deliver over the property in anticipation of the appointed term, unless the delay is for the benefit of the substitute. — N. 1053.

SECTION IV.

OF THE OPENING OF SUBSTITUTIONS AND THE DELIVERING OVER OF THE PROPERTY.

961. When no period is assigned for the opening of a substitution and the delivering over of the property, they take place at the death of the institute. — N. 1053.

962. The substitute takes the property directly from the grantor and not from the institute.

The substitute, by the opening of the substitution in his favor, becomes immediately seized of the property in the same manner as any other legatee; he may dispose of it absolutely and transmit it in his succession, if he be not prohibited from doing so, or if the substitution do not continue beyond him.

963. If by reason of a pending condition or some other disposition of the will,

the opening of the substitution do not take place immediately upon the death of the institute, his heirs and legatees continue, until the opening, to exercise his rights, and remain liable for his obligations.

964. The legatee who is charged as a mere trustee, to administer the property and to employ it or deliver it over in accordance to the will, even though the terms used appear really to give him the quality of a proprietor subject to deliver over, rather than that of a mere executor or administrator, does not retain the property in the event of the lapse of the ulterior disposition, or of the impossibility of applying such property to the purposes intended, unless the testator has manifested his intention to that effect. The property in such cases passes to the heir or the legatee who receives the succession. — C. 869.

965. The institute or his heirs deliver over the property together with its accessories; they render the fruits and interest accrued since the opening, if they have received them, unless the substitute, after being put in default to accept or repudiate the legacy, has failed to assume his quality.

966. [If the institute were a debtor or a creditor of the grantor, and in consequence of his accepting as heir, as universal legatee, or as legatee by general title, confusion take place so as to destroy his debt or his claim, such debt or claim, notwithstanding such confusion which is deemed to be only temporary, revives between the substitute and the institute or his heirs, when the property comes to be delivered over; except as to interest up to that time for which the confusion still holds.

The institute or his heirs are entitled to the separation of property in the prosecution of their claim, and may retain the property until they are paid.]

967. Institutes under age, interdicted, or unborn, or under coverture, are not relievable from the non-fulfilment of the obligations imposed upon them, or upon their husbands, tutors or curators for them, by this and the preceding section ; saving their recourse. — N. 1074.

SECTION V.

OF THE PROHIBITION TO ALIENATE.

968. The prohibition to alienate contained in a deed may, in certain cases, be connected with a substitution or may even constitute one.

It may also be made for other motives than that of substitution.

It may be stated in express terms, or may result from the conditions and circumstances of the act.

It includes the prohibition to hypothecate.

In gifts *inter vivos* the undertaking by the donee not to alienate has the same effects as the prohibition by the donor.

969. The cause or consideration of the prohibition to alienate, may be the interest either of the party disposing, or of the party receiving, or it may be that of the substitutes, or of third parties.

970. The prohibition to alienate things sold or conveyed by purely onerous title is void.

971. The prohibition to alienate may be simply confirmatory of a substitution.

It may constitute one, although express terms be not used, according to the rules hereinafter laid down.

972. [Although the motive of the prohibition to alienate be not expressed, and it be not declared under pain of nullity or some other penalty, the intention of the party disposing suffices to give it effect, unless the expressions are evidently within the limits of mere advice.

When the prohibition is not made for another motive, it is interpreted as establishing in favor of the party disposing and his heirs a right to get back the property.]

973. If the prohibition to alienate be made in favor of persons who are designated, or who may be ascertained, and who are to receive the property after the donee, the heir, or the legatee, a substitution is created in favor of such persons, although it be not in express terms.

974. When the prohibition to alienate extends to several degrees and is at the same time interpreted as implying a substitution, those to whom the prohibition successively applies after the first who receives, become substitutes in turn, as if they were the subject of express dispositions.

975. The prohibition to alienate may be confined to acts *inter vivos*, or to acts in contemplation of death, or may extend to both, or may be otherwise modified according to the will of the party disposing. Its extent is determined according to the object which the party disposing had in view, and the other attending circumstances.

If there be no restriction, the prohibition is deemed to cover acts of every description.

976. The simple prohibition to dispose of property by will, without other condition or indication, implies a substitution in favor of the natural heirs of the donee, or of the heir or legatee, for so much of the property as may remain at the death of such donee, heir or legatee.

977. The prohibition to

alienate out of the family, either of the party disposing or of the party receiving, or out of any other family, does not, in the absence of expressions denoting continuance, extend to others than those to whom it is addressed; the persons belonging to the family who take after them are not subject to it.

If the prohibition be addressed to no person in particular, it is deemed, in the absence of such expressions, to apply only to the person first benefited.

Substitutions made in a family are in all cases interpreted according to the same rules.

978. The prohibition to alienate out of the family, when no dispositions require the following of the legitimate order of succession, or any other order, does not prevent the alienation, by gratuitous or onerous title, made in favor of the more distant members of the family.

979. The term *family* when it is not limited, applies to all the relatives in the direct or collateral line belonging to the family, who come by successive degrees according to law or to the order indicated, without however representation being allowed otherwise than in the case of legacies.

980. In the prohibition to alienate, as in substitutions, and in gifts and legacies in general, the terms *children* or *grandchildren*, made use of without qualification either in the disposition or in the condition, apply to all the descendants, with or without the effect of extending to more than one degree according to the terms of the act.

981. [Prohibitions to alienate, although not accompanied by substitution, must be registered, even as regards moveable property, in the same manner as substitutions themselves.

The person thus prohibited and his tutor or curator, and the husband in the case of a married woman, are bound to effect such registration.]

CHAPTER IV (A).

OF TRUSTS.

981*a*. All persons capable of disposing freely of their property may convey property, moveable or immoveable, to trustees by gift or by will, for the benefit of any persons in whose favor they can validly make gifts or legacies. — R. S. Q. 5803. — C. 869, 964.

981*b*. Trustees, for the purposes of their trust, are seized as depositaries and administrators for the benefit of the donees or legatees of the property, moveable or immoveable, conveyed to them in trust, and may claim possession of it, even against the donees or legatees for whose benefit the trust was created.

This seizin lasts only for

the time stipulated for the duration of the trust ; and while it lasts, the trustees may sue and be sued and take all judicial proceedings for the affairs of the trust.—*Id.*

981*c*. The donor or testator creating the trust may provide for the replacing of trustees as long as the trust lasts, in case of refusal to accept, of death, or other cause of vacancy, and indicate the mode to be followed.

When it is impossible to replace them under the terms of the document creating the trust, or when the replacement is not provided for, any judge of the Superior Court may appoint replacing trustees, after notice to the benefited parties. — *Id.*

981*d*. Trustees dissipating or wasting the property of the trust, or refusing or neglecting to carry out the provisions of the document creating the trust, or infringing their duties, may be removed by the Superior Court. — *Id.*

981*e*. The powers of a trustee do not pass to his heirs or other successors, but the latter are bound to render an account of his administration. — *Id.*

981*f*. When there are several trustees, the majority may act, unless it be otherwise provided in the document creating the trust. — *Id.*

981*g*. Trustees act gratuitously, unless it be otherwise provided in the document creating the trust.

[All expenses incurred by trustees, in the fulfilment of their duties, are borne by the trust. — *Id.*

981*h*. Trustees are obliged to execute the trust which they have accepted, unless they be authorized by a judge of the Superior Court to renounce; and they are liable for damages resulting from their neglect to execute it, when not so authorized.—*Id.*

981*i*. Trustees are not personally liable to third parties with whom they contract. — *Id.*

981*j*. The trustees, without the intervention of the parties benefited, administer the property vested in them and dispose of it, invest moneys which are not payable to the parties benefited, and alter, vary and transpose, from time to time, the investments, in accordance with the provisions and terms of the document creating the trust.

In default of instructions, the trustees make investments without the intervention of the parties benefited, in accordance with the provisions of article 981*o*. — *Id.*

981*k*. Trustees are bound to exercise, in administering the trust, reasonable skill and the care of prudent administrators; but they are not liable for depreciation or loss in investments made according to the provisions of the document creating the trust, or of the law, or for loss on

deposits made in chartered banks or savings banks, unless there has been bad faith on their part in making such investments or deposits. — *Id.* — C. 981 p., 981 q. — P. 833 § 6.

981*l*. At the termination of the trust, the trustees must render an account, and deliver over all moneys and securities in their hands to the parties entitled thereto under the provisions of the document creating the trust, or entitled thereto by law.

They must also execute all transfers, conveyances, or other deeds necessary to vest the property held for the trust in the parties entitled thereto. — *Id.*

981*m*. Trustees are jointly and severally bound to render one and the same account, unless the donor or testator who created the trust has divided their functions, and each has kept within the scope assigned to him.

They are also jointly and severally responsible for the property vested in them, in their joint capacity, and for the payment of any balance in hand, or for any waste or for any loss arising from wrongful investments, saving where they are authorized to act separately, in which cases those having acted separately, within the scope assigned to them, are alone liable for such separate administration. — *Id.*

981*n*. Trustees are liable to coercive imprisonment for whatever is due, by reason of their administration, to those to whom they are accountable, subject to the provisions contained in the Code of Civil Procedure. — *Id.* — P. 833 § 1.

CHAPTER IV (B).

OF THE INVESTMENT OF MONEYS BELONGING TO OTHER PERSONS.

981*o*. Except in the case of testamentary executors otherwise authorized by the will, in that of institutes under a substitution otherwise authorized by the instrument creating the substitution, and in that of trustees otherwise authorized by the instrument constituting such trust, every institute in whatever degree under a substitution, howsoever created, and every executor under any will, and every tutor, curator or trustee having as such the possession or administration of property belonging to another, or held by him for the benefit of another, bound by law to invest money held by him as such administrator, must invest moneys held by them as such in Dominion or Provincial stock or in public securities of the United Kingdom or of the United States of America, or in municipal stock or debentures, or in the bonds or debentures of any school corporation in any city or town of this Province, or in real estate in this Prov-

ince, or on first privilege or hypothec upon real estate in this Province to an amount not exceeding three-fifths of the municipal valuation of such real estate. — *Id.* 7 Ed. VII., c. 54, s. 1.

981*p*. The institute, executor, administrator, tutor, curator or trustee, making investments in accordance with the preceding article, is exempt from all responsibility respecting the investments so made, saving always in the case of fraud, which renders these persons responsible for the damages occasioned by their fraud, under pain of coercive imprisonment, subject to the provisions contained in the Code of Civil Procedure. — P. 833 § 6.

981*q*. The institute, executor, administrator, tutor, curator and trustee, when investments are made otherwise than as provided in article 9810, or than as ordered by the will appointing the executors or administrators, or by the document creating the substitution or trust, are obliged to indemnify the parties to whom they are accountable for losses caused by the depreciation of the securities invested in, under pain of coercive imprisonment, subject to the provisions contained in the Code of Civil Procedure. — *Id.* — P. 833 § 6.

981*r*. Whenever the terms of the instrument give such persons the power to invest moneys, and a full or restricted discretion as to the nature or manner of such investment, they are held to have the like power and discretion to change from time to time any such investment they may have made, by selling the property in which they had invested, and reinvesting the proceeds as they might originally have done. — *Id.*

TITLE THIRD.

OF OBLIGATIONS.

GENERAL PROVISIONS.

982. It is essential to an obligation that it should have a cause from which it arises, persons between whom it exists, and an object.

983. Obligations arise from contracts, quasi-contracts, offences, quasi-offences, and from the operation of the law solely.

CHAPTER FIRST.

OF CONTRACTS.

SECTION I.

OF THE REQUISITES TO THE VALIDITY OF CONTRACTS.

984. There are four requisites to the validity of a contract:

Parties legally capable of contracting;

Their consent legally given;

Something which forms the object of the contract;

A lawful cause or consideration. — N. 1108.

§ 1. OF THE LEGAL CAPACITY TO CONTRACT.

985. All persons are capable of contracting, except those whose incapacity is expressly declared by law. — N. 1123.

986. Those legally incapable of contracting are:

Minors in the cases and according to the provisions contained in this code;

Interdicted persons;

Married women, except in the cases specified by law;

Those who, by special provisions of law, are prohibited from contracting by reason of their relation to each other, or of the object of the contract;

Persons insane or suffering a temporary derangement of intellect arising from disease, accident, drunkenness or other cause, or who by reason of weakness of understanding are unable to give a valid consent;

Persons who are affected by civil degradation. — 6 Ed. VII., c. 38, s. 2. — N. 1124.— C. 36, 177 et s., 210, 319 et s., 334, 335, 351, 1105, 1318, 1422, 1483.

987. The incapacity of minors and of persons interdicted for prodigality, is established in their favor.

Parties capable of contracting cannot set up the incapacity of the minors or of the interdicted persons with whom they have contracted. — N. 1125. — C. 334.

§ 2. OF CONSENT.

988. Consent is either express or implied. It is invalidated by the causes declared in the second section of this chapter. — N. 1109.

§ 3. OF THE CAUSE OR CONSIDERATION OF CONTRACTS.

989. A contract without a consideration, or with an unlawful consideration has no effect; but it is not the less valid though the consideration be not expressed or be incorrectly expressed in the writing which is evidence of the contract.—N. 1131, 1132.

990. The consideration is unlawful when it is prohibited by law, or is contrary to good morals or public order. N. 1133. — C. 13.

§ 4. OF THE OBJECT OF CONTRACTS. (See chap. V "Of the object of obligations.)

SECTION II.

OF CAUSES OF NULLITY IN CONTRACTS.

991. Error, fraud, violence or fear, and lesion are causes of nullity in contracts; subject to the limitations and rules contained in this code. — N. 1109. — C. 650, 2258.

§ 1. OF ERROR.

992. Error is a cause of nullity only when it occurs in the nature of a contract itself, or in the substance of the thing which is the object of the contract, or in some thing which is a principal consideration for making it. — N. 1110. — C. 148, 1921.— P. 785, 1007.

§ 2. OF FRAUD.

993. Fraud is a cause of nullity when the artifices practised by one party or with his knowledge are such that the other party would not have contracted without them.

It is never presumed and must be proved. — N. 1116. — P. 668, 784, 1007.

§ 3. OF VIOLENCE AND FEAR.

994. Violence or fear is a cause of nullity, whether practised or produced by the party for whose benefit the contract is made or by any other person. — N. 1109, 1111.

995. The fear whether produced by violence or otherwise must be a reasonable and present fear of serious injury. The age, sex, character and condition of the party are to be taken into consideration. — N. 1112.

996. Fear suffered by a contracting party is a cause of nullity whether it is fear of injury to himself, or to his wife, children or other near kindred, and sometimes when it is a fear of injury to strangers, according to the circumstances of the case. — N. 1113.

997. Mere reverential fear of a father or mother, or other ascendant, without any violence having been exercised or threats made, will not invalidate a contract. — N. 1114.

998. If the violence be only a legal constraint, or the fear only of a party doing that which he has a right to do, it is not a ground of nullity; but it is, if the forms of law be used or threatened for an unjust and illegal cause to extort a consent.

999. A contract for the purpose of delivering the party making it, or the husband, wife or near kinsman of such party from violence or threatened injury, is not invalidated by reason of such violence or threats; provided the person in whose favor it

is made be in good faith, and not in collusion with the offending party.

1000. Error, fraud, and violence or fear are not causes of absolute nullity in contracts. They only give a right of action, or exception, to annul or rescind them. — N. 1117.

§ 4. OF LESION.

1001. Lesion is a cause of nullity only in certain cases and with respect to certain persons, as explained in this section. — N. 1118. — C. 751 et s. 1259

1002. Simple lesion is a cause of nullity in favor of an unemancipated minor against every kind of act when not aided by his tutor, and when so aided, against every kind of act other than acts of administration; and in favor of an emancipated minor against all contracts which exceed his legal capacity, as established in the title *Of Minority, Tutorship and Emancipation;* subject to the exceptions specially expressed in this code. — N. 1305. — C. 789, 1707.

1003. The simple declaration made by a minor that he is of the age of majority forms no bar to his obtaining relief for cause of lesion. — N. 1307.

1004. A minor is not relievable for cause of lesion, when it results only from a casual and unforeseen event. — N. 1306.

1005. A minor who is a banker, trader or mechanic is not relievable for cause of lesion from contracts made for the purposes of his business or trade. — N. 1308. — C. 321, 323.

1006. [A minor is not relievable from the stipulations contained in his marriage contract, when they have been made with the consent and assistance of those whose consent is required for the validity of his marriage.] — N. 1309. — C. 763, 1267.

1007. A minor is not relievable from obligations resulting from his offences and quasi-offences. — N. 1310.

1008. A person is not relievable from a contract made by him during minority, when he has ratified it since attaining the age of majority. — N. 1311. — C. 1214, 1235 § 2.

1009. Contracts by minors for the alienation or incumbrance of their immoveable property made with or without the intervention of their tutors or curators, unattended with the formalities required by law, may be avoided without proof of lesion.

1010. [When all the formalities required with respect to minors or interdicted persons for the alienation of immoveable property, or the partition of a succession, have been observed, such contracts, and acts have the same force and effect as if they had been executed by persons of the age of major-

ity and free from interdiction.] — N. 1314. — C. 297 et s., 341 b., 693, 709. — P. 1341 et s.

1011. When minors, interdicted persons or married women are admitted in these quailties to be relieved from their contracts, the reimbursement of that which has been paid in consequence of these contracts, during the minority, interdiction or marriage, cannot be exacted, unless it is proved that what has been so paid has turned to their profit. — N. 1312. — C. 1146.

1012. [Persons of the age of majority are not entitled to relief from their contracts for cause of lesion only.] — N. 1313. — C. 650.

SECTION III.

OF THE INTERPRETATION OF CONTRACTS.

1013. When the meaning of the parties in a contract is doubtful, their common intention must be determined by interpretation rather than by an adherence to the literal meaning of the words of the contract. — N. 1156.

1014. When a clause is susceptible of two meanings, it must be understood in that in which it may have some effect rather than in that in which it can produce none.— N. 1157.

1015. Expressions susceptible of two meanings must be taken in the sense which agrees best with the matter of the contract. — N. 1158.

1016. Whatever is doubtful must be determined according to the usage of the country where the contract is made. — N. 1159. — C. 8.

1017. The customary clauses must be supplied in contracts, although they be not expressed. — N. 1160.

1018. All the clauses of a contract are interpreted the one by the other, giving to each the meaning derived from the entire act. — N. 1161.

1019. In cases of doubt, the contract is interpreted against him who has stipulated and in favor of him who has contracted the obligation. — N. 1162.

1020. However general the terms may be in which a contract is expressed, they extend only to the things concerning which it appears that the parties intended to contract. — N. 1163.

1021. When the parties in order to avoid a doubt whether a particular case comes within the scope of a contract, have made special provisions for such case, the general terms of the contract are not on this account restricted to the single case specified. — N. 1164.

SECTION IV.

OF THE EFFECT OF CONTRACTS.

1022. Contracts produce obligations, and sometimes

have the effect of discharging or modifying other contracts.

They have also the effect in some cases of transferring the right of property.

They can be set aside only by the mutual consent of the parties, or for causes established by law. — N. 1134.

1023. Contracts have effect only between the contracting parties; they cannot affect third persons, except in the cases provided in the articles of the fifth section of this chapter. — N. 1165.

1024. The obligation of a contract extends not only to what is expressed in it, but also to all the consequences which, by equity, usage or law, are incident to the contract, according to its nature. — N. 1135.

1025. [A contract for the alienation of a thing certain and determinate makes the purchaser owner of the thing by the consent alone of the parties, although no delivery be made.

The foregoing rule is subject to the special provisions contained in this code concerning the transfer and registry of vessels.

The safekeeping and risk of the thing before delivery are subject to the general rules contained in the chapters *Of the effect of Obligations* and *Of the extinction of obligations* in this title.] — N. 1583. — C. 777, 795, 1063, 1064, 1472, 1596.

1026. If the thing to be delivered be uncertain or indeterminate, the creditor does not become the owner of it until it is made certain and determinate, and he has been legally notified that it is so. — C. 1060, 1474.

1027. The rules contained in the two last preceding articles, apply as well to third persons as to the contracting parties, subject, in contracts for the transfer of immoveable property, to the special provisions contained in this code for the registration of titles to and claims upon such property.

But if a party oblige himself successively to two persons to deliver to each of them a thing which is purely moveable property, that one of the two who has been put in actual possession is preferred and remains owner of the thing although his title be posterior in date; provided, however, that his possession be in good faith.] — N. 1141. — C. 1472, 2098.

SECTION V.

OF THE EFFECT OF CONTRACTS WITH REGARD TO THIRD PERSONS.

1028. A person cannot, by a contract in his own name, bind any one but himself and his heirs and legal representatives; but he may contract in his own name that another shall perform an obligation, and in this case he is liable in damages if such obligation be not performed

by the person indicated. — N. 1119, 1120.

1029. A party in like manner may stipulate for the benefit of a third person, when such is the condition of a contract which he makes for himself, or of a gift which he makes to another; and he who makes the stipulation cannot revoke it, if the third person have signified his assent to it. — N. 1121.

1030. A person is deemed to have stipulated for himself, his heirs and legal representatives, unless the contrary is expressed, or result from the nature of the contract. — N. 1122.

1031. Creditors may exercise the rights and actions of their debtor, when to their prejudice he refuses or neglects to do so; with the exception of those rights which are exclusively attached to the person. — N. 1166. — C. 480, 655, 745, 1315. — P. 827, 1094.

SECTION VI.

OF THE AVOIDANCE OF CONTRACTS AND PAYMENTS MADE IN FRAUD OF CREDITORS.

1032. Creditors may in their own name impeach the acts of their debtors in fraud of their rights, according to the rules provided in this section. — N. 1167. — C. 484, 655, 745, 803, 2023, 2187.

1033. A contract cannot be avoided unless it is made by the debtor with intent to defraud, and will have the effect of injuring the creditor.

1034. A gratuitous contract is deemed to be made with intent to defraud, if the debtor be insolvent at the time of making it.

1035. An onerous contract made by an insolvent debtor with a person who knows him to be insolvent is deemed to be made with intent to defraud.

1036. Every payment by an insolvent debtor to a creditor knowing his insolvency, is deemed to be made with intent to defraud, and the creditor may be compelled to restore the amount or thing received or the value thereof, for the benefit of the creditors according to their respective rights.

1037. *Article* 1037 *is repealed by Federal act respecting the Revised Statutes of Canada.* — *R. S. Q.* 6233; 49 *V., C., c.* 4, *s.* 5, *schedule A.*

1038. An onerous contract made with intent to defraud on the part of the debtor, but in good faith on the part of the person with whom he contracts is not voidable; saving the special provisions applicable in cases of insolvency of traders. — C. 803, 2023, 2085, 2090.

1039. No contract or payment can be avoided, by reason of anything contained in this section, at the suit of a subsequent creditor, unless

he is subrogated in the rights of an anterior creditor. — R. S. Q., 6234, 43 V., C., c. 1; 49 V., C., c. 4, s. 5, schedule A.

1040. [No contract or payment can be avoided by reason of anything contained in this section, at the suit of any individual creditor, unless such suit is brought within one year from the time of his obtaining a knowledge thereof.

If the suit be by assignees or other representatives of the creditors collectively, it must be brought within a year from the time of their appointment.]

CHAPTER SECOND.

OF QUASI-CONTRACTS.

1041. A person capable of contracting may, by his lawful and voluntary act, oblige himself toward another, and sometimes oblige another toward him, without the intervention of any contract between them. — N. 1371.

1042. A person incapable of contracting may, by the quasi-contract which results from the act of another, be obliged toward him.

SECTION I.

OF THE QUASI-CONTRACT NEGOTIORUM GESTIO.

1043. He who of his own accord assumes the management of any business of another, without the knowledge of the latter, is obliged to continue the management which he has begun, until the business is completed or the person for whom he acts is in a condition to provide for it himself; he must also take charge of the accessories of such business.

He subjects himself to all the obligations which result from an express mandate. — N. 1372.

1044. He is obliged to continue his management although the person for whom he acts die before the business is terminated, until such time as the heir or other legal representative is in a condition to take the management of it. — N. 1373.

1045. He is bound to exercise in the management of the business all the care of a prudent administrator.

Nevertheless the court may moderate the damages arising from his negligence or fault, according to the circumstances under which the management of the business has been assumed. — N. 1374.

1046. He whose business has been well managed is bound to fulfil the obligations that the person acting for him has contracted in his name, to indemnify him for all the personal liabilities which he has assumed, and to reimburse him all necessary or useful expenses. — N. 1375.

SECTION II.

OF THE QUASI-CONTRACT RESULTING FROM THE RECEPTION OF A THING NOT DUE.

1047. He who receives what is not due to him, through error of the law or of fact, is bound to restore it; or if it cannot be restored in kind, to give the value of it.

[If the person receiving be in good faith, he is not obliged to restore the profits of the thing received.] — N. 1376. — C. 1140.

1048. He who pays a debt believing himself by error to be the debtor, has a right of recovery against the creditor.

Nevertheless that right ceases when the title has in good faith been cancelled or has become ineffective in consequence of the payment; saving the remedy of him who has paid against the true debtor. — N. 1377.

1049. If the person receiving be in bad faith he is bound to restore the sum paid or thing received, with the interest and profits which it ought to have produced from the time of receiving it, or from the time that his bad faith began. — N. 1378. — C. 411, 412.

1050. If the thing unduly received be a thing certain, he who has received it is bound to restore its value, if through his fault and his bad faith it have perished or deteriorated, or can no longer be delivered in kind.

If he have received the thing in bad faith, or after having been put in default retain it in bad faith, he is answerable for its loss by a fortuitous event; unless the thing would have equally perished or deteriorated in the possession of the owner. — N. 1379. — C. 1150, 1200.

1051. If he who has unduly received the thing sell it, being in good faith, he is bound to restore only the price for which it is sold. — N. 1380.

1052. He to whom the thing is restored, is bound to repay to the possessor, although he were in bad faith, the expenses which have been incurred for its preservation. — N. 1381.

CHAPTER THIRD.

OF OFFENCES AND QUASI-OFFENCES.

1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.[1] — N. 1382, 1383. — C. 1007, 1106, 1294, 2261, 2262.

1054. He is responsible not only for the damage caused by his own fault, but also for that caused by the fault of persons under his

[1] *Vide* R. S. Q. 5550 et s. as to damages to immoveables.

control and by things which he has under his care;

The father, or, after his decease, the mother, is responsible for the damage caused by their minor children;

Tutors are responsible in like manner for their pupils;

Curators or others having the legal custody of insane persons, for the damage done by the latter;

Schoolmasters and artisans, for the damage caused by their pupils or apprentices while under their care.

The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which has caused the damage.

Masters and employers are responsible for the damage caused by their servants and workmen in the performance of the work for which they are employed. — N. 1384.

1055. The owner of an animal is responsible for the damage caused by it, whether it be under his own care or under that of his servants, or have strayed or escaped from it.

He who is using the animal is equally responsible while it is in his service.

The owner of a building is responsible for the damage caused by its ruin, where it has happened from want of repairs or from an original defect in its construction. — N. 1385, 1386.

1056. In all cases where the person injured by the commission of an offence or a quasi-offence dies in consequence, without having obtained indemnity or satisfaction, his consort and his ascendant and descendant relations have a right, but only within a year after his death, to recover from the person who committed the offence or quasi-offence, or his representatives, all damages occasioned by such death.

In the case of a duel, action may be brought in like manner not only against the immediate author of the death, but also against all those who took part in the duel, whether as seconds or as witnesses.

In all cases no more than one action can be brought in behalf of those who are entitled to the indemnity and the judgment determines the proportion of such indemnity which each is to receive.

These actions are independent and do not prejudice the criminal proceedings to which the parties may be subject. — C. 2262.

CHAPTER FOURTH.

OF OBLIGATIONS WHICH RESULT FROM THE OPERATION OF LAW SOLELY.

1057. Obligations result in certain cases from the sole

and direct operation of law, without the intervention of any act, and independently of the will of the person obliged or of him in whose favor the obligation is imposed.

Such are the obligations of tutors and other administrators who cannot refuse the charge cast upon them;

The obligation of children to furnish the necessaries of life to their indigent parents;

Certain obligations of owners of adjoining properties;

The obligations which in certain cases arise from fortuitous events;

And others of a like nature. — N. 1370.

CHAPTER FIFTH.

OF THE OBJECT OF OBLIGATIONS.

1058. Every obligation must have for its object something which a party is obliged to give, or to do, or not to do. — N. 1126.

1059. Those things only which are objects of commerce can become the object of an obligation. — N. 1128. — C. 1486.

1060. An obligation must have for its object something determinate at least as to its kind.

The quantity of the thing may be uncertain, provided it be capable of being ascertained. — N. 1129.—C. 1026, 1151, 1474.

1061. Future things may be the object of an obligation.

But a person cannot renounce a succession not yet devolved, nor make any stipulation with regard to it, even with the consent of him whose succession is in question; except by marriage contract. — N. 1130. — C. 658.

1062. The object of an obligation must be something possible and not forbidden by law or good morals. — N. 1131. — C. 13.

CHAPTER SIXTH.

OF THE EFFECT OF OBLIGATIONS.

SECTION I.

GENERAL PROVISIONS.

1063. An obligation to give involves the obligation to deliver the thing and to keep it safe until delivery. — N. 1136. — C. 1150, 1200.

1064. [The obligation to keep the thing safely obliges the person charged therewith to keep it with all the care of a prudent administrator.] — N. 1137.

1065. Every obligation renders the debtor liable in damages in case of a breach of it on his part. The cred-

itor may, in cases which admit of it, demand also a specific performance of the obligation, and that he be authorized to execute it at the debtor's expense, or that the contract from which the obligation arises be set aside; subject to the special provisions contained in this code, and without prejudice, in either case, to his claim for damages. — N. 1142, 1144. — C. 777.

1066. The creditor, without prejudice to his claim for damages, may require also, that anything which has been done in breach of the obligation shall be undone, if the nature of the case will permit; and the court may order this to be effected by its officers, or authorize the injured party to do it at the expense of the other. — N. 1143. — P. 608.

SECTION II.

OF DEFAULTS.

1067. The debtor may be put in default either by the terms of the contract, when it contains a stipulation that the mere lapse of the time for performing it shall have that effect; or by the sole operation of law; or by the commencement of a suit, or a demand which must be in writing unless the contract itself is verbal. — N. 1139.

1068. The debtor is also in default, when the thing which he has obliged himself to give or to do could only have been given or done within a certain time which he has allowed to expire. — N. 1146.

1069. [In all contracts of a commercial nature in which the time of performance is fixed, the debtor is put in default by the mere lapse of such time.]

SECTION III.

OF THE DAMAGES RESULTING FROM THE INEXECUTION OF OBLIGATIONS.

1070. Damages are not due for the inexecution of an obligation until the debtor is in default under some one of the provisions contained in the articles of the preceding section; except the obligation be not to do, when he who contravenes it is liable for damages by the fact of the contravention alone. — N. 1145, 1146.

1071. The debtor is liable to pay damages in all cases in which he fails to establish that the inexecution of the obligation proceeds from a cause which cannot be imputed to him, although there be no bad faith on his part. — N. 1147.

1072. The debtor is not liable to pay damages when the inexecution of the obligation is caused by a for-

tuitous event or by irresistible force, without any fault on his part, unless he has obliged himself thereunto by the special terms of the contract. — N. 1148. — C. 17, § 24.

1073. The damages due to the creditor are in general the amount of the loss that he has sustained and of the profit of which he has been deprived; subject to the exceptions and modifications contained in the following articles of this section. — N. 1149.

1074. The debtor is liable only for the damages which have been foreseen or might have been foreseen at the time of contracting the obligation, when his breach of it is not accompanied by fraud. — N. 1150.

1075. In the case even in which the inexecution of the obligation results from the fraud of the debtor, the damages comprise only that which is an immediate and direct consequence of its inexecution. — N. 1151.

1076. [When it is stipulated that a certain sum shall be paid for damages for the inexecution of an obligation, such sum and no other, either greater or less, is allowed to the creditor for such damages.

But if the obligation have been performed in part, to the benefit of the creditor and the time for its complete performance be not material, the stipulated sum may be reduced; unless there be a special agreement to the contrary.] — N. 1152, 1231. — C. 1131 et s.

1077. The damages resulting from delay in the payment of money, to which the debtor is liable, consist only of interest at the rate legally agreed upon by the parties, or, in the absence of such agreement, at the rate fixed by law.

These damages are due without the creditor being obliged to prove any loss. They are due from the day of the default only, except in the cases where by law they are due from the nature of the obligation.

This article does not affect the special rules applicable to bills of exchange and contracts of suretyship. — N. 1153. — C. 313, 1069, 1111, 1360, 1366, 1534, 1714, 1724, 1785, 1840.

1078. Interest accrued from capital sums also bears interest:

1. When there is a special agreement to that effect;

2. When in any action brought such new interest is specially demanded;

3. When a tutor has received or ought to have received interest upon the moneys of his pupil and has failed to invest it within the term prescribed by law. — N. 1154. — C. 296.

CHAPTER SEVENTH.

OF DIFFERENT KINDS OF OBLIGATIONS.

SECTION I.

OF CONDITIONAL OBLIGATIONS.

1079. An obligation is conditional when it is made to depend upon an event future and uncertain, either by suspending it until the event happens, or by dissolving it accordingly as the event does or does not happen.

When an obligation depends upon an event which has actually happened, but is unknown to the parties, it is not conditional. It takes effect or is defeated from the time at which it is contracted. — N. 1168. — C. 2051, 2236. — P. 196 § 1, 800.

1080. Every condition contrary to law or inconsistent with good morals is void, and renders void the obligation which depends upon it.

An obligation which is made to depend upon the doing or happening of a thing impossible is also void. — N. 1172. — C. 13, 760.

1081. An obligation conditional on the will purely of the party promising, is void; but if the condition consist in the doing or not doing of a certain act, although such act be dependent on his will, the obligation is valid. — N. 1174. — C. 782, 824.

1082. If there be no time fixed for the fulfilment of a condition, it may always be fulfilled; and it is not deemed to have failed until it has become certain that it will not be fulfilled. — N. 1176, 1178.

1083. When an obligation is contracted under the condition that an event will not happen within a fixed time, such condition is fulfilled by the expiration of the time without the event having occurred. It is equally so if before the time has expired it becomes certain that the event will not happen. If there be no time fixed, the condition is not deemed fulfilled until it is certain that the event will not happen. — N. 1177.

1084. A conditional obligation becomes absolute when the party bound under the condition prevents the fulfilment of it. — N. 1178.

1085. The fulfilment of the condition has a retroactive effect from the day on which the obligation has been contracted. If the creditor be dead before the fulfilment of the condition, his rights pass to his heirs or legal representatives. — N. 1179. — C. 901, 902.

1086. The creditor may, before the fulfilment of the condition, do all acts conservatory of his rights. — N. 1180.

1087. When the obligation has been contracted under a suspensive condition, the debtor is bound to deliver the thing which is the object

of it, upon the fulfilment of the condition.

If, without the fault of the debtor, the thing have altogether perished or can no longer be delivered, no obligation exists.

If the thing be deteriorated without the fault of the debtor, the creditor must receive it, in the state in which it is, without diminution of price.

If the thing be deteriorated by the fault of the debtor, the creditor may either exact the thing in the state in which it is, or demand the dissolution of the contract, with damages in either case. — N. 1182.

1088. A resolutive condition, when accomplished, effects of right the dissolution of the contract. It obliges each party to restore what he has received, and replaces things in the same state as if the contract had not existed; subject nevertheless to the rules established in the last preceding article with respect to things which have perished or been deteriorated. — N. 1183. — C. 2038.

SECTION II.

OF OBLIGATIONS WITH A TERM.

1089. A term differs from a suspensive condition in as much as it does not suspend the obligation, but only delays the execution of it. — N. 1185. — C. 902.

1090. That which is due with a term of payment cannot be exacted before the expiration of the term; but that which has been paid in advance voluntarily and without error or fraud cannot be recovered. — N. 1186. — C. 2236. — P. 196 § 1.

1091. The term is always presumed to be stipulated in favor of the debtor, unless it results from the stipulation or the circumstances that it has also been agreed upon in favor of the creditor. —N. 1187. — C. 1163 § 5.

1092. The debtor cannot claim the benefit of the term when he has become a bankrupt or insolvent, or has by his own act diminished the security given to his creditor by the contract. — N. 1188. — P. 802.

SECTION III.

OF ALTERNATIVE OBLIGATIONS.

1093. The debtor in an alternative obligation is discharged by giving or doing one of the two things which form the object of his obligation; but he cannot compel the creditor to accept a part of one of these things and a part of the other. — N. 1189, 1191.

1094. The option belongs to the debtor unless it has been expressly granted to the creditor. — N. 1190.

1095. An obligation is pure and simple although con-

tracted in an alternative form, if one of the two things promised could not be the object of the obligation. —N. 1192.

1096. An alternative obligation becomes pure and simple if one of the things promised perish, or can no longer be delivered, even through the fault of the debtor. The value of such thing cannot be offered in its place;

If both things have perished or can no longer be delivered, and the debtor be in fault with respect to one of them, he must pay the value of that which remained last. — N. 1193.

1097. When, in the cases provided for in the last preceding article, the option has been granted by the contract to the creditor:

Either one of the two things has perished or can no longer be delivered, and then, if it be without the fault of the debtor, the creditor shall have the one which remains, but if the debtor be in fault, the creditor may demand the thing which remains or the value of the other;

Or both things have perished or can no longer be delivered, and if the debtor be in fault with regard to both or either of them, the creditor may demand the value of the one or of the other at his option.—N. 1194.

1098. If both things have perished, the obligation is extinguished in the cases and subject to the conditions provided in article 1200. — N. 1195.

1099. The rules contained in the articles of this section apply to cases where the alternative obligation comprises more than two things, or has for its object to do or not to do something. — N. 1196.

SECTION IV.

OF JOINT AND SEVERAL OBLIGATIONS.

§ 1. OF JOINT AND SEVERAL INTEREST AMONG CREDITORS.

1100. A joint and several interest among creditors gives to each of them singly the right of exacting the performance of the whole obligation and thereupon of discharging the debtor. — N. 1197.

1101. The debtor has the option of paying to either of the joint and several creditors, so long as he is not prevented by a suit instituted by one of them.

[Nevertheless, if one of the creditors release the debt, the debtor is discharged for the part only of such creditor. The same rule applies to all cases in which the debt is extinguished otherwise than by actual payment; subject to the rules applicable to commercial partnerships.] — N. 1198.

1102. The rules concerning

the interruption of prescription in relation to joint and several creditors are declared in the title *Of Prescription.* — N. 1199. — C. 2230.

§ 2. OF DEBTORS JOINTLY AND SEVERALLY OBLIGED.

1103. There is a joint and several obligation on the part of the codebtors when they are all obliged to the same thing, in such manner that each of them singly may be compelled to the performance of the whole obligation, and that the performance by one discharges the others toward the creditor. — N. 1200.

1104. An obligation may be joint and several although one of the codebtors be obliged differently from the others to the performance of the same thing; for example, if one be obliged conditionally while the obligation of the other is pure and simple, or if one be allowed a term which is not granted to the other. — N. 1201.

1105. An obligation is not presumed to be joint and several; it must be expressly declared to be so.

This rule does not prevail in cases where a joint and several obligation arises of right by virtue of some provision of law;

Nor is it applicable to commercial transactions, in which the obligation is presumed to be joint and several, except in cases otherwise regulated by special laws. — N. 1202. — C. 981*m.*, 1712, 1726, 1772, 1854.

1106. The obligation arising from the common offence or quasi-offence of two or more persons is joint and several.

1107. The creditor of a joint and several obligation may apply for payment to any one of the codebtors at his option, without such debtor having a right to plead the benefit of division. — N. 1203. — C. 1945 et s.

1108. Legal proceedings taken against one of the codebtors do not prevent the creditor from taking similar proceedings against the others. — N. 1204.

1109. If the thing due have perished or can no longer be delivered, through the fault of one or more of the joint and several debtors, or after he or they have been put in default, the other codebtors are not discharged from the obligation to pay the price of the thing, but the latter are not liable for damages.

The creditor can recover damages only from the codebtors through whose fault the thing has perished or can no longer be delivered, and those in default. — N. 1205.

1110. The rules concerning the interruption of prescription in relation to joint and several debtors are declared in the title *Of Prescription.* — N. 1206. — C. 2231, 2239.

1111. A demand of interest made against one of the joint

and several debtors causes interest to run against them all. — N. 1207.

1112. A joint and several debtor sued by the creditor may plead all the exceptions which are personal to himself as well as such as are common to all the codebtors.

He cannot plead such exceptions as are purely personal to one or more of the other codebtors. — N. 1208. — C. 1179, 1183, 1184, 1191.

1113. When one of the codebtors becomes heir or legal representative of the creditor, or when the creditor becomes heir or legal representative of one of the codebtors, the confusion extinguishes the joint and several debt only for the part and portion of such codebtor. — N. 1209.

1114. The creditor who consents to the division of the debt with regard to one of the codebtors, preserves his joint and several right against the others for the whole debt. — N. 1210. — C. 1119.

1115. A creditor who receives separately the share of one of his codebtors, so specified in the receipt and without reserve of his rights, renounces the joint and several obligation with regard only to such codebtor.

The creditor is not deemed to discharge the debtor from his joint and several obligation when he receives from him a sum equal to the share for which he is bound, unless the receipt specifies that it is for his share.

The rule is the same with regard to a demand made against one of the codebtors for his share, if the latter have not acquiesced in the demand, or if a judgment of condemnation have not intervened. — N. 1211.

1116. The creditor who receives separately and without reserve the share of one of the codebtors in the arrears or interest of the debt, loses his joint right and several right only for the arrears and interests accrued and not for those which may in future accrue, nor for the capital, unless the separate payment has been continued during [ten] consecutive years. — N. 1212.

1117. The obligation contracted jointly and severally toward the creditor is divided of right among the codebtors, who among themselves are obliged each for his own share and portion only. — N. 1213.

1118. The codebtor of a joint and several debt who has paid it in full, can only recover from the others the share and portion of each of them, even though he be specially subrogated in the rights of the creditor.

If one of the codebtors be found insolvent, the loss occasioned by his insolvency is divided by contribution among all the others, includ-

ing him who has made the payment. — N. 1214.

1119. In case the creditor have renounced his joint and several action against one of the debtors, if one or more of the remaining codebtors become insolvent, the shares of those who are insolvent are made up by contribution by all the other codebtors, except the one so discharged whose part in the contribution is borne by the creditor. — N. 1215. — C. 1114.

1120. If the matter for which the debt has been contracted jointly and severally concern only one of the codebtors, he is liable for the whole toward his codebtors, who, with regard to him, are considered only as his sureties. — N. 1216. — C. 1941.

SECTION V.

OF DIVISIBLE AND INDIVISIBLE OBLIGATIONS.

1121. An obligation is divisible when it has for its object a thing which in its delivery or performance is susceptible of division either materially or intellectually. — N. 1217.

1122. A divisible obligation must be performed between the creditor and the debtor, as if it were indivisible. The divisibility takes effect only with their heirs or legal representatives, who, on the one hand, cannot enforce the obligation, and, on the other, are not held for the performance of it, beyond their respective shares as representing the creditor or the debtor. — N. 1220. — C. 1137, 1149, 2230, 2231.

1123. The rule established in the last preceding article is subject to exception with respect to the heirs and legal representatives of the debtor, and the obligation must be performed as if it were indivisible, in the three following cases:

1. When the object of the obligation is a certain specific thing of which one of them is in possession;

2. When one of them alone is charged by the title with the performance of the obligation;

3. When it results either from the nature of the contract or of the thing which is the object of it, or from the end proposed by it, that the intention of the contracting parties was that the obligation should not be performed in parts.

[In the first case, he who possesses the thing due, — in the second case, he who is alone charged, — and in the third case, each of the coheirs or legal representatives, may be sued for the whole thing due; saving in all cases the recourse of the one sued against the others.] — N. 1221.

1124. An obligation is indivisible:

1. When it has for its ob-

ject something which by its nature is not susceptible of division, either materially or intellectually;

2. When although the object of the obligation is divisible by its nature, yet from the character given to it by the contract, this object becomes insusceptible not only of performance in parts but also of division. — N. 1218.

1125. The stipulation of joint and several liability does not give to an obligation the character of indivisibility. — N. 1219.

1126. Each one of those who have contracted an indivisible obligation is held for the whole although the obligation have not been contracted jointly and severally. — N. 1222.

1127. The rule established in the last preceding article prevails also with regard to the heirs and legal representatives of him who has contracted an indivisible obligation. — N. 1223. — C. 2231.

1128. The obligation to pay damages resulting from the non-performance of an indivisible obligation is divisible.

But if the non-performance have been caused by the fault of one of the codebtors, or of one of the coheirs or legal representatives, the whole amount of damages may be demanded of such codebtor, heir or legal representative. — C. 1136.

1129. Each coheir or legal representative of the creditor may exact in full the execution of an indivisible obligation.

He cannot alone release the whole of the debt, or receive the value instead of the thing itself; if one of the coheirs or legal representatives have alone released the debt or received the value of the thing, the others cannot demand the indivisible thing without making allowance for the portion of him who has made the release or who has received the value. — N. 1224. — C. 2230.

1130. The heir or legal representative of the debtor sued for the whole of an indivisible obligation may demand delay to make the coheirs or other legal representatives parties to the suit, unless the debt is of such a nature that it can be discharged only by the one so sued, who may in such case be condemned alone, saving his recourse for indemnity against the others.—N. 1225. — P. 177 § 8.

SECTION VI.

OF OBLIGATIONS WITH A PENAL CLAUSE.

1131. A penal clause is a secondary obligation by which a person, to assure the performance of the primary obligation, binds himself to a penalty in case of its inexecution. — N. 1226.

1132. The nullity of the primary obligation for any other cause than want of interest, carries with it that of the penal clause. The nullity of the latter does not carry with it that of the primary obligation.—N. 1227.

1133. The creditor may enforce the performance of the primary obligation, if he elect so to do, instead of demanding the stipulated penalty.

But he cannot demand both, unless the penalty has been stipulated for a simple delay in the performance of the primary obligation. — N. 1228, 1229.

1134. The penalty is not incurred until the debtor is in default of performing the primary obligation, or has done the thing which he had obliged himself not to do. — N. 1230.

1135. [The amount of penalty cannot be reduced by the court.

But if the obligation have been performed in part to the benefit of the creditor, and the time fixed for its complete performance be not material, the penalty may be reduced; unless there is a special agreement to the contrary.] — N. 1152. — C. 1076.

1136. When the primary obligation contracted with a penal clause is indivisible, the penalty is incurred upon the contravention of it by any one of the heirs or other legal representatives of the debtor; and it may be demanded in full against him who has contravened it, or against each one of them for his share and portion, and hypothecarily for the whole; saving their recourse against him who has caused the penalty to be so incurred. — N. 1232. — C. 1128.

1137. When the primary obligation contracted under a penalty is divisible, the penalty is incurred only by that one of the heirs or other legal representatives of the debtor who contravenes the obligation, and for the part only for which he is held in the primary obligation, without there being any action against those who have executed it.

This rule suffers exception when, the penal clause having been added with the intention that the payment could not be made in parts, one of the coheirs or other legal representatives has prevented the execution of the obligation for the whole; in this case he is liable for the entire penalty and the others are liable for their respective shares only, saving their recourse against him. — N. 1218, 1233. — C. 1122.

CHAPTER EIGHTH.

OF THE EXTINCTION OF OBLIGATIONS.

SECTION I.

GENERAL PROVISIONS.

1138. An obligation becomes extinct:

By payment;
By novation;
By release;
By compensation;
By confusion;
By the performance of it becoming impossible;
By judgment of nullity or rescission;
By the effect of the resolutive condition, which has been explained in the preceding chapter;
By prescription;
By the expiration of the time limited by law or by the parties for its duration;
By the death of the creditor or debtor in certain cases;
By special clauses applicable to particular contracts which are explained under their respective heads. — N. 1234.

SECTION II.

OF PAYMENT.

§ 1. GENERAL PROVISIONS.

1139. By payment is meant not only the delivery of a sum of money in satisfaction of an obligation, but the performance of anything to which the parties are respectively obliged.

1140. Every payment presupposes a debt; what has been paid where there is no debt may be recovered.

There can be no recovery of what has been paid in voluntary discharge of a natural obligation.—N. 1235. — C. 1047 et s., 1927.

1141. Payment may be made by any person, although he be a stranger to the obligation, and the creditor be put in default by the offer of a stranger to perform the obligation on the part of the debtor without the knowledge of the latter, but it must be for the advantage of the debtor and not merely to change the creditor that the performance of the obligation is so offered. — N. 1236, 1237.

1142. If the obligation be to do something which the creditor has an interest in having done by the debtor himself, the obligation cannot be performed by a stranger to it without the consent of the creditor. — N. 1237.

1143. Payment to be valid must be made by one having a legal right in the thing paid which entitles him to give it in payment.

Nevertheless if a sum. of money or other thing of a nature to be consumed by use be given in payment, it cannot be reclaimed from the creditor who has consumed it in good faith, although the payment have been made by one who was not the owner nor capable of alienating it. — N. 1238.

1144. Payment must be made to the creditor or to some one having his authority, or authorized by a court of justice or by law to receive it for him.

Payment made to a person

who has no authority to receive it is valid, if the creditor have ratified the payment or profited by it. — N. 1239.

1145. Payment made in good faith to the ostensible creditor is valid, although it be afterwards established that he is not the rightful creditor. — N. 1240. — C. 870.

1146. Payment is not valid if made to a creditor who is incapable by law of receiving it, unless the debtor proves that the thing paid has turned to the benefit of such creditor. — N. 1241. — C. 1011.

1147. Payment made by a debtor to his creditor to the prejudice of a seizure or attachment is not valid against the seizing or attaching creditors, who may, according to their rights, constrain the debtor to pay a second time; saving, in such case, only his remedy against the creditor so paid. — N. 1242. — P. 680.

1148. A creditor cannot be compelled to receive any other thing than the one due to him, although the thing offered be of greater value than the thing due. — N. 1243.

1149. A debtor cannot compel his creditor to receive payment of his debt in parts, even if the debt be divisible.

[Nor can the court in any case by its judgment order a debt actually payable to be paid by instalments without the consent of the creditor. However, if the debt is made up of interest exceeding the legal rate and seems to the court to be usurious, or if it includes such interest, whether such interest is called interest or be claimed under the name of discount, reduction in the advance, commission or otherwise, such court may order that such usurious interest, or such portion of usurious interest, be paid by instalments, and for the amount of such instalments and their term of payment, at its discretion, according to circumstances. — 6 Ed. VII, c. 40, s. 1. — N. 1244. — C. 1122.

1150. The debtor of a certain specific thing is discharged by the delivery of the thing in the condition in which it is at the time of delivery, provided that the deterioration in the thing has not been caused by any act or fault for which he is responsible, and that previously to the deterioration he was not in default. — N. 1245.

1151. If the object of the obligation be a thing determined in kind only, the debtor cannot be required to give a thing of the best quality, nor can he offer in discharge one of the worst.

The thing must be of merchantable quality.—N. 1246. — C. 1026, 1060, 1474.

1152. Payment must be

made in the place expressly or impliedly indicated by the obligation.

If no place be so indicated, the payment, when it is of a certain specific thing, must be made at the place where the thing was at the time of contracting the obligation.

In all other cases payment must be made at the domicile of the debtor; subject, nevertheless, to the rules provided under the titles relating to particular contracts. — N. 1247. — C. 85, 1164, 1165, 1533, 1809, 2219.

1153. The expenses attending payment are at the charge of the debtor. — N. 1248. — P. 589.

§ 2. OF PAYMENT WITH SUBROGATION.

1154. Subrogation in the rights of a creditor in favor of a third person who pays him, is either conventional or legal. — N. 1249. — C. 740, 741, 1118, 1950, 1959, 1986, 1987, 2052, 2070, 2127. — P. 692, 816.

1155. Subrogation is conventional:

1. When the creditor, on receiving payment from a third person, subrogates him in all his rights against the debtor. This subrogation must be express and made at the same time as the payment.

2. When the debtor borrows a sum for the purpose of paying his debt, and of subrogating the lender in the rights of the creditor. It is necessary to the validity of the subrogation in this case, that the act of loan and the acquittance be notarial [or be executed before two subscribing witnesses;] that in the act of loan it be declared that the sum has been borrowed for the purpose of paying the debt, and that in the acquittance it be declared that the payment has been made with the moneys furnished by the new creditor for that purpose. This subrogation takes effect without the consent of the creditor.

[If the act of loan and the acquittance be executed before witnesses, the subrogation takes effect against third persons from the date only of their registration, which is to be made in the manner and according to the rules provided by law for the registration of hypothecs.] — 1250.

1156. Subrogation takes place by the sole operation of law and without demand:

1. In favor of a creditor who pays another creditor whose claim is preferable to his by reason of privilege or hypothec;

2. [In favor of the purchaser of immoveable property who pays a creditor to whom the property is hypothecated;

3. In favor of a party who pays a debt for which he is

held with others or for others, and has an interest in paying it;]

4. In favor of a beneficiary heir who pays a debt of the succession with his own moneys;

5. When a rent or debt due by one consort alone has been redeemed or paid with the moneys of the community; in this case the other consort is subrogated in the rights of the creditor according to the share of such consort in the community. — N. 1251.

1157. The subrogation declared in the preceding articles takes effect as well against sureties as against principal debtors. It cannot prejudice the rights of the creditor when he has been paid in part only; in such case he may enforce his rights for whatever remains due, in preference to him from whom he has received payment in part. — N. 1252.

§ 3. OF THE IMPUTATION OF PAYMENTS.

1158. A debtor of several debts has the right of declaring, when he pays, what debt he means to discharge. — N. 1253.

1159. A debtor of a debt which bears interest or produces rent, cannot without the consent of the creditor impute any payment which he makes to the discharge of the capital, in preference to the arrears of interest or of rent. Any payment made on the capital and interest, but which is not entire, is imputed first upon the interest. — N. 1254.

1160. When a debtor of several debts has accepted a receipt by which the creditor has imputed what he has received in discharge specially of one of the debts, the debtor cannot afterwards require the imputation to be made upon a different debt, except upon grounds for which contracts may be avoided. — N. 1255.

1161. When the receipt makes no special imputation, the payment must be imputed in discharge of the debt actually payable which the debtor has at the time the greater interest in paying. If of several debts one alone be actually payable, the payment must be imputed in discharge of such debt although it be less burdensome than those which are not actually payable.

If the debts be of like nature and equally burdensome, the imputation is made upon the oldest.

All things being equal, it is made proportionally on each. — N. 1256.

§ 4. OF TENDER AND DEPOSIT.

1162. When a creditor refuses to receive payment, the debtor may make an actual tender of the money or other thing due; and, in any action

afterwards brought for its recovery, he may plead and renew the tender, and if the thing due be a sum of money, may deposit the amount; and such tender, or such tender and deposit, if the thing due be a sum of money, are equivalent with respect to the debtor to a payment made on the date of the first tender; provided that from the date of the first tender the debtor continue always to be ready and willing to deliver the thing or to pay the sum of money.

Whenever any person desires to pay any sum of money and is prevented from doing so by reason of the refusal of his creditor or of the absence of his creditor from the place where the debt is payable, such person may deposit such sum in the general deposit office for the Province in accordance with the provisions of the law respecting judicial deposits; such deposit frees the debtor from the payment of interest from the date thereof, provided that the creditor present had without lawful right refused to accept the offers. — R. S. Q. 5804. — N. 1257. — C. 1823 § 2. — P. 583 et s.

1163. It is necessary to the validity of a tender:

1. That it be made to a creditor legally capable of receiving payment or to some one having authority to receive for him;

2. That it be made on the part of a person legally capable of paying;

3. That it be of the whole sum of money or other thing payable, and of all arrears of rent and interest, and all liquidated costs, with a sum for costs not liquidated, saving the right to make up any deficiency in the same;

4. That, if it be of money, it be made in coin declared by law to be current and a legal tender;

5. That the term of payment have expired if stipulated in favor of the creditor;

6. That the condition under which the debt has been contracted have been fulfilled;

7. That the sum of money or other thing tendered be offered at the place where, according to the terms of the obligation or by law, payment should be made. — N. 1258. R.S.C. 1906, s. 5, Legal Tender c. 27.

1164. [If, by the terms of the obligation or by law, payment is to be made at the domicile of the debtor, a notification in writing by him to the creditor that he is ready to make payment has the same effect as an actual tender, provided that in any action afterwards brought the debtor make proof that he had the money or thing due ready for the payment at the time and place when and where the same was payable.] — C. 1152.

1165. If a certain specific

thing be deliverable on the spot where it is, the debtor must by his tender require the creditor to come and take it there.

If the thing be not so deliverable and be from its nature difficult of transportation, the debtor must indicate by his tender the place where it is and the day and hour when he is ready to deliver it at the place where payment ought to be made.

If the creditor fail in the former case to take the thing away, or in the latter to signify his willingness to accept, the debtor may, if he think fit, remove the thing to any other place for safe-keeping at the risk of the creditor. — N. 1264.

1166. So long as the tender and deposit have not been accepted by the creditor, the debtor may withdraw them by leave of the court, in the manner provided in the Code of Civil Procedure, and if he do so his codebtors or sureties are not discharged. — N. 1261. — P. 588.

1167. When the tender and deposit have been declared valid by the court, the debtor cannot, even with the consent of the creditor, withdraw them to the prejudice of his codebtors or sureties or other third persons. — N. 1262, 1263.

1168. The mode in which tenders and deposits must be made is provided in the Code of Civil Procedure.

SECTION III.

OF NOVATION.

1169. Novation is effected:

1. When the debtor contracts toward his creditor a new debt which is substituted for the ancient one, and the latter is extinguished;

2. When a new debtor is substituted for a former one who is discharged by the creditor;

3. When by the effect of a new contract, a new creditor is substituted for a former one toward whom the debtor is discharged. — N. 1271.

1170. Novation can be effected only between persons capable of contracting. — N. 1272.

1171. Novation is not presumed. The intention to effect it must be evident. — N. 1273.

1172. Novation by the substitution of a new debtor may be effected without the concurrence of the former one. — N. 1274.

1173. The delegation by which a debtor gives to his creditor a new debtor who obliges himself towards the creditor does not effect novation, unless it is evident that the creditor, intends to discharge the debtor who makes the delegation. — N. 1275.— C. 800.

1174. The simple indication by the debtor of a person who is to pay in his place, or the simple indication by the

creditor of a person who is to receive in his place, or the transfer of a debt with or without the acceptance of the debtor, does not effect novation. — N. 1277.

1175. A creditor who has discharged his debtor by whom delegation has been made, has no remedy against such debtor, if the person delegated become insolvent, unless there is a special reserve of the remedy. — N. 1276.

1176. The privileges and hypothecs which attach to an ancient debt do not pass to the one which is substituted for it, unless the creditor has expressly reserved them. — N. 1278.

1177. When novation is effected by the substitution of a new debtor, the original privileges and hypothecs cannot be transferred to the property of the new debtor; nor can they, without the concurrence of the former debtor, be reserved upon the property of the latter. — N. 1279.

1178. When novation is effected between the creditor and one of joint and several debtors, the privileges and hypothecs which attach to the ancient debt can be reserved only upon the property of the codebtor who contracts the new debt. — N. 1280.

1179. Joint and several debtors are discharged by novation effected between the creditor and one of the codebtors.

Novation effected with respect to the principal debtor discharges his sureties.

Nevertheless, if the creditor have stipulated in the first case, for the accession of the codebtors, and in the second, for that of the sureties, the ancient debt subsists if the codebtors or the sureties refuse to accede to the new contract. — N. 1281.

1180. The debtor consenting to be delegated cannot oppose to his new creditor the exceptions which he might have set up against the party delegating him although at the time of the delegation he were ignorant of such exceptions.

The foregoing rule does not apply if at the time of the delegation nothing be due to the new creditor, and is without prejudice to the recourse of the debtor delegated against the party delegating him.

SECTION IV.

OF RELEASE.

1181. The release of an obligation may be made either expressly or tacitly by persons legally capable of alienating.

It is made tacitly when the creditor voluntarily surrenders to his debtor the original title of the obligation, unless there is proof of a con-

trary intention. — N. 1282, 1283. — C. 1101, 1129.

1182. The surrender of a thing given in pledge does not create a presumption of the release of the debt for which it was pledged. — N. 1286.

1183. The surrender of the original title of an obligation to one of joint and several debtors is available in favor of his codebtors. — N. 1284.

1184. An express release granted in favor of one of joint and several debtors does not discharge the others; but the creditor must deduct from the debt the share of him whom he has released. — N. 1285.

1185. An express release granted to the principal debtor discharges his sureties.

If granted to the surety, it does not discharge the principal debtor.

If granted to one of several sureties it does not discharge the others, except in cases in which the latter would have a recourse upon the one released and to the extent of such recourse. — N. 1287.

1186. [That which the creditor receives from a surety as a consideration for releasing him from his suretyship is not imputed in discharge of the principal debtor, or of the other sureties, except as regards the latter, in cases in which they have a recourse upon the one released, and to the extent of such recourse.] — N. 1288.

SECTION V.

OF COMPENSATION.

1187. When two persons are mutually debtor and creditor of each other, both debts are extinguished by compensation which takes place between them in the cases and manner hereinafter declared. — N. 1289.— P. 217.

1188. Compensation takes place by the sole operation of law between debts which are equally liquidated and demandable and have each for object a sum of money or a certain quantity of indeterminate things of the same kind and quality.

So soon as the debts exist simultaneously they are mutually extinguished in so far as their respective amounts correspond. — N. 1290, 1291. — C. 2246.

1189. Compensation is not prevented by a term granted by indulgence for the payment of one of the debts. — N. 1292.

1190. Compensation takes place whatever be the cause or consideration of the debts or of either of them, except in the following cases:

1. The demand in restitution of a thing of which the owner has been unjustly deprived;

2. The demand in restitution of a deposit;

3. A debt which has for object an alimentary provision not liable to seizure. — N. 1293. — P. 599 § 4.

1191. The surety may avail himself of the compensation which takes place when the creditor owes the principal debtor.

But the principal debtor cannot set up in compensation what his creditor owes to the surety.

A joint and several debtor cannot set up in compensation what the creditor owes to his codebtor, except for the share of the latter in the joint and several debt. — N. 1294.

1192. A debtor who accepts purely and simply an assignment made by the creditor to a third person, cannot afterwards set up against the assignee the compensation which he might before the acceptance have set up against the assignor.

An assignment not accepted by the debtor, but of which due notification has been given to him, prevents compensation only of the debts due by the assignor posterior to such notification. — N. 1295.

1193. When the two debts are payable at different places, compensation cannot be set up without allowing for the expenses of remittance. — N. 1296.

1194. When compensation by the sole operation of law is prevented by any of the causes declared in this section, or by others of a like nature, the party in whose favor alone the cause of objection exists, may demand the compensation by exception; and in such case the compensation takes place from the time of pleading the exception only.

1195. When there are several debts subject to compensation due by the same person, the compensation is governed by the rules provided for the imputation of payments. — N. 1297. — C. 1159, 1161.

1196. Compensation does not take place to the prejudice of rights acquired by third parties. — N. 1298.

1197. He who pays a debt which is of right extinguished by compensation cannot afterwards in enforcing the debt which he has failed to set up in compensation avail himself, to the prejudice of third parties, of the privileges and hypothecs attached to such debt, unless there were just grounds for his ignorance of its existence at at the time of payment. — N. 1299. — C. 2081 § 5.

SECTION VI.

OF CONFUSION.

1198. When the qualities of creditor and debtor are united in the same person,

there arises a confusion which extinguishes the obligation; nevertheless in certain cases when confusion ceases to exist, its effects cease also. — N. 1300. — C. 671 § 2, 966.

1199. The confusion which takes place by the concurrence of the qualities of creditor and principal debtor in the same person, avails the sureties.

That which takes place by the concurrence of the qualities of surety and creditor or of surety and principal debtor does not extinguish the principal obligation. — N. 1301. — C. 1113, 1957.

SECTION VII.

OF THE PERFORMANCE OF THE OBLIGATION BECOMING IMPOSSIBLE.

1200. When the certain specific thing which is the object of an obligation perishes, or the delivery of it becomes from any other cause impossible, without any act or fault of the debtor, and before he is in default, the obligation is extinguished; it is also extinguished although the debtor be in default, if the thing would equally have perished in the possession of the creditor; unless in either of the above mentioned cases the debtor has expressly bound himself for fortuitous events.

The debtor must prove the fortuitous event which he alleges.

The destruction of a thing stolen or the impossibility of delivering it does not discharge him who stole the thing, or him who knowingly received it, from the obligation to pay its value. — N. 1302. — C. 1050.

1201. When the performance of an obligation has become impossible, without any act or fault of the debtor, he is bound to assign to the creditor such rights of indemnity as he may possess relating to the obligation.— N. 1303.

1202. When the performance of an obligation to do has become impossible without any act or fault of the debtor and before he is in default, the obligation is extinguished and both parties are liberated; but if the obligation be beneficially performed in part, the creditor is bound to the extent of the benefit actually received by him.

CHAPTER NINTH.

OF PROOF.

SECTION I.

GENERAL PROVISIONS.

1203. The party who claims the performance of an obligation must prove it.

On the other hand he who

alleges facts in avoidance or extinction of the obligation must prove them; subject nevertheless to the special rules declared in this chapter.

1204. The proof produced must be the best of which the case in its nature is susceptible.

Secondary or inferior proof cannot be received unless it is first shown that the best or primary proof cannot be produced.

1205. Proof may be made by writings, by testimony, by presumptions, by the confession of the party or by his oath, according to the rules declared in this chapter and in the manner provided in the Code of Civil Procedure. — N. 1316.

1206. The rules declared in this chapter, unless expressly or by their nature limited, apply in commercial as well as in other matters.

When no provision is found in this code for the proof of facts concerning commercial matters, recourse must be had to the rules of evidence laid down by the laws of England.

SECTION II.

OF PROOF BY WRITINGS.

§ 1. OF AUTHENTIC WRITINGS.

1207. The following writings executed or attested with the requisite formalities by a public officer having authority to execute or attest the same in the place where he acts, are authentic and make proof of their contents without any evidence of the signature or seal appended to them, or of the official character of such officer being necessary, that is to say:

Copies of the acts of the Imperial Parliament, of the Parliament of the Province of Canada, and of the Parliament of the Dominion of Canada, and copies of the Edicts and Ordinances, and of the Ordinances of the Province of Quebec, and of the statutes and Ordinances of the Province of Lower Canada, and of the statutes of Upper Canada, printed by the printer duly authorized by Her Majesty the Queen, or by any of her predecessors;

Copies of acts of the Legislatures of the provinces forming the Dominion of Canada, or of any of the provinces or territories, hereafter admitted into the Dominion, printed by a Queen's printer, or other printer by authority, for the Government of any of the said provinces or territories;

Letters-patent, commissions, proclamations and other instruments issued by her Majesty the Queen, or by the executive Government of the Province of Canada or of the Dominion of Canada;

Letters-patent, orders in council, commissions, proclamations and other instruments issued by the Government of this Province;

Copies of official documents, proclamations or announcements, printed by a Queen's printer, or other printer by authority for the government of a province of the Dominion of Canada and of the provinces or territories hereafter admitted into the Dominion;

Official announcements in the Canada Gazette and in the Quebec Official Gazette published by authority;

The records, registers, journals and public documents of the several departments of the Executive Government and of the Parliament of the Province of Canada and of the Dominion of Canada, as well as those of the Executive Government and Legislature of this Province;

The records and registers of courts of justice and of judicial proceedings in the Province;

The books and registers of a public character required by law to be kept by official persons in the Province;

The books, registers, by-laws, records and other documents and papers of municipal corporations and of other corporations of a public character in this Province;

Official copies and extracts of and from the books, documents and writings above mentioned, and certificates and all other writings included within the legal intendment of this article, although not enumerated. — R. S. Q., 5805.

1208. A notarial instrument received before one notary alone is authentic if signed by all the parties.

If the parties or any of them be unable to sign, it is necessary, to the authenticity of the instrument, that the consent given to the instrument by the party thereto who does or cannot sign be received in the presence of a subscribing witness.

The witnesses may be of either sex and must be not less than twenty-one years of age, of sound mind, without interest in the instrument, (not civilly dead), and not deemed infamous by law. Aliens and married women (except the wife of the notary receiving the instrument) may act as witnesses.

This article is subject to the provisions contained in the next following article, and to those relating to wills. It does not apply to the cases mentioned in Article 2380, when a notary alone is sufficient. — 56 V., c. 39 s. 1. — C. 36 § 4, 843 et s. [1].

1209. Notifications, summonses, protests and services, by which a reply is required,

[1] *Vide* 57 V., c. 45, making valid certain notarial documents which do not mention the fulfilment of certain formalities.

may be made by one notary, whether the party in whose name they are made has or has not signed the deed.

Such instruments are authentic and make proof of their contents until contradicted or disavowed.

But nothing inserted in any such instrument, as the answer of the party upon whom the same is served, is proof against him, unless it be signed by such party.

With the exception of the notifications, summonses, protests and services which precede, all other notifications, summonses, protests and services may be made in the form above indicated or by an ordinary notarial deed signed in the office of the notary or elsewhere. — 63 V., c. 40.

In such case it is sufficient for the notary to serve a copy of such deed upon the person to be so notified, summoned or protested, or at his domicile.

It is not necessary to deliver to the adverse party a copy of the *procès-verbal* of service; such *procès-verbal* may be drawn up and signed afterwards. — *Id.* 5807. — P. 586.

1210. An authentic writing makes complete proof between the parties to it and their heirs and legal representatives:

1. Of the obligation expressed in it;

2. Of what is expressed in it by way of recital, if the recital have a direct reference to the obligation or to the object of the parties in executing the instrument. If the recital be foreign to such obligation and to the object of the parties in executing the instrument, it can serve only as a commencement of proof. — N. 1319, 1320.

1211. An authentic writing may be contradicted and set aside as false in whole or in part, upon an improbation in the manner provided in the Code of Civil Procedure and in no other manner.—P. 225 et s. — N. 1319.

1212. Counter-letters have effect between the parties to them only; they do not make proof against third persons. — N. 1321.

1213. Acts of recognition do not make proof of the primordial title, unless the substance of the latter is specially set forth in the recognition.

Whatever the recognition contains over and above the primordial title, or different from it, does not make proof against it. — N. 1337.

1214. The act of ratification or confirmation of an obligation which is voidable does not make proof unless it expresses the substance of the obligation, the cause of its being voidable and the intention to cover nullity. — N. 1338. — C. 1235 § 2.

§ 2. OF COPIES OF AUTHENTIC WRITINGS.

1215. Copies of notarial instruments, certified to be true copies of the original, by the notary or other public officer, who has the legal custody of such original, are authentic and make proof of what is contained in the original. — N. 1334.

1216. Extracts duly certified and delivered by notaries or by the prothonotaries of the Superior Court from the originals of authentic instruments lawfully in their custody are authentic and make proof of their contents; provided such extracts contain the date, place of execution and nature of the intrument, the names and description of the parties to it, the name of the notary before whom it was received, the clauses or parts of clauses extracted at full length, and that mention be made of the day on which the extract is delivered and be noted on the originals. — C. 2132.

1217. When the original of any notarial instrument has been lost by unforeseen accident, a copy of an authentic copy thereof makes proof of the contents of the original, provided that such copy be attested by the notary or other public officer with whom the authentic copy has been deposited by judicial authority for the purposes of granting copies thereof, as provided in the Code of Civil Procedure. — N. 1335. — P. 1327 et s.

1218. Copies of notarial instruments and of extracts therefrom, of all authentic documents, whether judicial or not, of papers of record, and of all documents and instruments in writing, even those under private signature, or executed before witnesses, lawfully registered at full length, when such copies bear the certificate of the registrar, are authentic evidence of such documents, if the originals have been destroyed by fire or other accident, or otherwise lost. — N. 1336.

1219. If in such cases the original document be in the possession of an adverse party, or of a third party, without collusion on the part of the person who relies upon it, and it cannot be produced, the copy certified as in the preceding article makes proof in like manner.

§ 3. OF CERTAIN WRITINGS EXECUTED OUT OF LOWER CANADA.

1220. The certificate of the secretary of any foreign state or of the executive government thereof, and the original documents and copies of documents hereinafter enumerated, executed out of Lower Canada, make *primâ facie* proof of the contents thereof without any evidence being necessary of the seal

or signature affixed to such original or copy, or of the authority of the officer granting the same, namely:

1. Exemplifications of any judgment or other judicial proceeding of any court out of Lower Canada, under the seal of such court, or under the signature of the officer having the legal custody of the record of such judgment or other judicial proceeding;

2. Exemplifications of any will executed out of Lower Canada, under the seal of the court wherein the original will is of record, or under the signature of the judge or other officer having the legal custody of such will, and the probate of such will under the seal of the court;

3. Copies of the exemplification of such will and of the probate thereof certified by the prothonotary of any court in Lower Canada, in whose office the exemplification and probate have been recorded, at the instance of an interested party and by the order of a judge of such court; such probate is also received as proof of the death of the testator;

4. Certificates of marriage, baptism or birth, and burial of persons out of Lower Canada, under the hand of the clergyman or public officer who officiated, and extracts from any register of such marriage, baptism or birth, and burial, certified by the clergyman or public officer having the legal custody hereof;

5. Notarial copies of any power of attorney executed out of Lower Canada, in the presence of one or more witnesses and authenticated before the mayor of the place or other public officer of the country where it bears date, the original whereof is deposited with the notary public in Lower Canada granting the copy;

6. The copy taken by a prothonotary or a clerk of a circuit court in Lower Canada of any power of attorney executed out of Lower Canada in the presence of one or more witnesses and authenticated before any mayor or other public officer of the country where it bears date, such copy being taken in a cause wherein the original is produced by a witness who refuses to part with it, and being certified and deposited in the same cause;

7. Copies duly certified by a notary in the Province of Quebec of all the writings and documents above enumerated which have been previously deposited with such notary.—62 V., c. 49.

8. In the county of Gaspe, any copy delivered by the prothonotary, of any power of attorney executed out of the Province of Quebec, in presence of one or more witnesses and authenticated before any mayor or other

public officer of the country where it bears date, such copy being taken from the original deposited and kept in his office, among the records of the Superior Court. — 9 Ed. VII, c. 70, s. 1.

The original powers of attorney mentioned in the preceding paragraphs numbers five and six, are held to be duly proved; but the truth of the exemplifications, probates, certificates or extracts, and the original powers of attorney mentioned in this article, may be denied and proof thereof be required in the manner provided in the Code of Civil Procedure. — P. 209.

§ 4. OF PRIVATE WRITINGS.

1221. A writing which is not authentic by reason of any defect of form, or of the incompetency of the officer, avails as a private writing, if it have been signed by all the parties; saving the provisions contained in article 895. — N. 1318. — C. 855.

1222. Private writings acknowledged by the party against whom they are set up, or legally held to be acknowledged or proved, have the same effect in making proof between the parties thereto, and between their heirs and legal representatives, as authentic writtings. — N. 1322.

1223. If the party against whom a private writing is set up do not formally deny his writing or signature in the manner provided in the Code of Civil Procedure, it is held to be acknowledged. His heirs or legal representatives are only obliged to declare under oath that they do not know his writing or signature. — 60 V., c. 50 s. 18.— N. 1324. — P. 208.

1224. In the case of formal denial by a party of his writing or signature, or in the case of a declaration by his heirs or legal representatives that they do not know it, proof must be made in the manner provided in the Code of Civil Procedure.—N. 1324.

1225. Private writings have no date against third persons but from the time of their registration, or from the death of one of the subscribing parties or witnesses, or from the day that the substance of the writing has been set forth in an authentic instrument.

The date may nevertheless be established against third persons by legal proof. — N. 1328. — C. 1281.

1226. The rule declared in the last preceding article does not apply to writings of a commercial nature. Such writings are presumed to have been made on the day they bear date, in the absence of proof to the contrary.

1227. Family registers and papers do not make proof in favor of him by whom they

are written. They are proof against him:

1. In all cases in which they formally declare a payment received;

2. When they contain express mention that a minute is made to supply a defect of title to a person in whose favor an obligation is declared to exist. — N. 1331.

1228. What is written by the creditor on the back or upon any other part of the title which has always remained in his possession, though the writing be neither signed nor dated, is proof against him when it tends to establish the discharge of the debtor.

In like manner what is written by the creditor on the back or upon any other part of the duplicate of a title or of a receipt is proof, provided such duplicate be in the hands of the debtor. — N. 1332.

1229. No indorsement or memorandum of any payment upon a promissory note, bill of exchange or other writing, made by or on behalf of the party to whom such payment is made, is received in proof of such payment so as to take the debt out of the operation of the law respecting the limitation of actions.

SECTION III.

OF TESTIMONY.

1230. *Repealed by 60 V., c. 50, s. 19. Vide P. 312 et s.*

1231. *Repealed by 60 V., c. 50, s. 19. Vide P. 312 et s.*

1232. *Repealed by 60 V., c. 50, s. 19. Vide P. 312 et s.*

1233. Proof may be made by testimony:

1. Of all facts concerning commercial matters;

2. In all matters in which the principal sum of money or value in question does not exceed [fifty dollars;]

3. In cases in which real property is held by permission of the proprietor without lease, as provided in the title *Of Lease and Hire;*

4. In cases of necessary deposits, or deposits made by travellers in an inn, and in other cases of a like nature;

5. In cases of obligations arising from quasi-contracts, offences, and quasi-offences, and all other cases in which the party claiming could not procure proof in writing;

6. In cases in which the proof in writing has been lost by unforeseen accident, or is in the possession of the adverse party or of a third person without collusion of the party claiming, and cannot be produced;

7. In cases in which there is a commencement of proof in writing.

In all other matters proof must be made by writing or by the oath of the adverse party.

The whole, nevertheless, subject to the exceptions and limitations specially declared in this section, and to the

provisions contained in article 1690. — N. 1341, 1347, 1348. — C. 232 et s., 860, 1206, 1281, 1669, 1677, 1816, 2260 § 7. — P. 312 et s.

1234. Testimony cannot in any case, be received to contradict or vary the terms of a valid written instrument. — N. 1341.

1235. In commercial matters in which the sum of money or value in question exceeds [fifty dollars,] no action or exception can be maintained against any party or his representatives unless there is a writing signed by the former, in the following cases:

1. Upon any promise or acknowledgment whereby a debt is taken out of the operation of the law respecting the limitation of actions;

2. Upon any promise or ratification made by a person of the age of majority, of any obligation contracted during his minority;

3. Upon any representation, or assurance in favor of a person to enable him to obtain credit, money or goods thereupon;

4. Upon any contract for the sale of goods, unless the buyer has accepted or received part of the goods or given something in earnest to bind the bargain;

The foregoing rule applies although the goods be intended to be delivered at some future time or be not at the time of the contract ready for delivery. — C. 1567.

1236. In any action for the recovery of a sum which does not exceed [fifty dollars,] proof by testimony cannot be received if such sum be a balance or make part of a debt under a contract which cannot be proved by testimony.

The creditor may, nevertheless, prove by testimony a promise made by the debtor to pay such balance, when it does not exceed [fifty dollars.] — N. 1344.

1237. [If in the same action several sums be demanded which united form a sum exceeding fifty dollars, proof by testimony may be received if the debts have arisen from different causes or have been contracted at different times, and each were originally for a sum less than fifty dollars.] — N. 1345.

SECTION IV.

OF PRESUMPTIONS.

1238. Presumptions are either established by law or arise from facts which are left to the discretion of the courts. — N. 1349.

1239. Legal presumptions are those which are specially attached by law to certain facts. They exempt from making other proof those in whose favor they exist; certain of them may be contradicted by other proof; others

are presumptions *juris et de jure* and cannot be contradicted. — N. 1352.

1240. No proof is admitted to contradict a legal presumption, when, on the ground of such presumption, the law annuls certain instruments or disallows a suit, unless the law has reserved the right of making proof to the contrary, and saving what is provided with respect to the oaths or judicial admissions of a party. — N. 1352.

1241. The authority of a final judgment (*res judicata*) is a presumption *juris et de jure;* it applies only to that which has been the object of the judgment, and when the demand is founded on the same cause, is between the same parties acting in the same qualities, and is for the same thing as in the action adjudged upon. — N. 1351. — C. 1920.

1242. Presumptions not established by law are left to the discretion and judgment of the court. — N. 1353.

SECTION V.

OF ADMISSIONS.

1243. Admissions are extra-judicial or judicial. They cannot be divided against the party making them. — N. 1354, 1356.

Nevertheless, an admission may be divided in the following cases, according to circumstances, and in the discretion of the court:

1. When it contains facts which are foreign to the issue;

2. When the part of the admission objected to is improbable or is invalidated by indications of fraud or of bad faith, or by contrary evidence;

3. When the facts contained in the admission have no connection with each other. — 60 V., c. 50, s. 20.

1244. An extra-judicial admission must be proved by writing or the oath of the party against whom it is set up, except in the cases in which, according to the rules declared in this chapter, proof by testimony is admissible. — N. 1355.

1245. A judicial admission is complete proof against the party making it.

It cannot be revoked unless it is proved to have been made through an error of fact. — N. 1356. — P. 354 et s., 359.

SECTION VI.

OF THE OATHS OF PARTIES.

1246. Repealed by 60 V., c. 50, s. 21. Vide P. 371, 372.

§ 1. OF THE DECISORY OATH.

1247. *Repealed by* 60 *V., c. 50, s. 21. Vide P.* 371, 372.

1248. *Repealed by* 60 *V., c. 50, s. 21. Vide P.* 371, 372.

1249. *Repealed by* 60 *V., c.* 50, *s.* 21. *Vide P.* 371, 372.
1250. *Repealed by* 60 *V., c.* 50, *s.* 21. *Vide P.* 371, 372.
1251. *Repealed by* 60 *V., c.* 50, *s.* 21. *Vide P.* 371, 372.
1252. *Repealed by* 60 *V., c.* 50, *s.* 21.
1253. *Repealed by* 60 *V., c.* 50, *s.* 21.
1254. *Repealed by* 60 *V., c.* 50, *s.* 21.
1255. *Repealed by* 60 *V., c.* 50, *s.* 21.
1256. *Repealed by* 60 *V., c.* 50, *s.* 21.

TITLE FOURTH.

OF MARRIAGE COVENANTS AND OF THE EFFECT OF MARRIAGE UPON THE PROPERTY OF THE CONSORTS.

CHAPTER FIRST.

GENERAL PROVISIONS.

1257. All kinds of agreements, may be lawfully made in contracts of marriage, even those which, in any act inter vivos would be, in any other, void; such as the renunciation of successions which have not yet devolved, the gift of future property, the conventional appointment of an heir, and other dispositions in contemplation of death. — N. 1387. — C. 1413.

1258. All covenants contrary to public order or to good morals, or forbidden by any prohibitory law, are, however, excepted from the above rule. — N. 1387. — C. 13, 1384.

1259. Thus the consorts cannot derogate from the rights incident to the authority of the husband over the persons of the wife and the children, or belonging to the husband as the head of the conjugal association, nor from the rights conferred upon the consorts by the title *of Paternal Authority* and the title *of Minority, Tutorship and Emancipation* in the present code. — N. 1388. — C. 1384.

1260. If no covenants have been made, or if the contrary have not been stipulated, the consorts are presumed to have intended to subject themselves to the general laws and customs of the country, and particularly to the legal community of property, and to the customary or legal dower in favor of the wife and of the children to be born of their marriage.

From the moment of the celebration of marriage, these presumed agreements become irrevocably the law between the parties, and can no longer be revoked or altered. — N. 1393.

1261. In the case of the preceding article, the community is established and governed in accordance with the rules set forth in the second chapter, and those relating to dower are laid down in the third chapter in the present title.

1262. Community of property, which the consorts are free to exclude by stipulation, may be altered or modified at pleasure, by their contract of marriage, and is called, in such case, conventional community, the principal rules concerning which are contained in the second section of the second chapter of this title. — N. 1387.

1263. Legal or customary dower, which the parties are likewise at liberty to exclude, may also be altered or modified at pleasure, by the contract of marriage, and is called in such case, prefixed or conventional dower, the most ordinary rules concerning which are contained in the first section of the third chapter of this title. — N. 1387.

1264. All marriage covenants must be made in notarial form, and before the solemnizing of marriage, upon which they are conditional.

Contracts of marriage made in certain localities, for which an exception has been created by special laws, are exempted from the necessity of being in notarial form.— N. 1394.

1265. After marriage, the marriage covenants contained in the contract cannot be altered, [even by the mutual donation of usufruct, which is abolished,] nor can the consorts in any other manner confer benefits *inter vivos* upon each other, except in conformity with the provisions of the law, under which a husband may, subject to certain conditions and restrictions, insure his life for his wife and children. — R. S. Q., 5809[1]. — N. 1395. — C. 770.

1266. Alterations made in marriage covenants, before the celebration of the marriage, must, on pain of nullity, be established by act in notarial form, in the presence, and with the consent, of all such parties to the first contract as are interested in such alterations. — N. 1396, 1397.

1267. [Minors capable of contracting marriage, may validly make, in favor of their future consorts or chil-

[1] R. S. Q. *vide* 5580 et s., as to Life Insurance by Husbands and Parents.

dren, all such agreements or gifts as the contract admits of, provided they are assisted by their tutors, if they have any, and by the other persons whose consent is necessary to the validity of the marriage; the benefits which they confer in such contracts upon third parties are subject to the rules which apply to minors in general.] — N. 1398. — C. 763, 1006.

CHAPTER SECOND.

OF COMMUNITY OF PROPERTY.

1268. There are two kinds of community of property: legal community, the rules governing which are contained in the first section of this chapter, and conventional community, the principal and most usual conditions of which are declared in the second section of the same chapter.

1269. [Community, whether legal or conventional, commences from the day the marriage is solemnized; the parties cannot stipulate that it shall commence at any other period.] — N. 1399.

SECTION I.

OF LEGAL COMMUNITY.

1270. Legal community is that which the law, in the absence of stipulation to the contrary, establishes between consorts, by the mere fact of their marriage, in respect of certain descriptions of property, which they are presumed to have intended to subject to it.

1271. Legal community may be established by the simple declaration which the parties make in the contract of their intention that it shall exist. It also takes place when no mention is made of it, when it is not expressly nor impliedly excluded, and also when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles. — N. 1400. — C. 1260.

§ 1. WHAT THINGS COMPOSE THE ASSETS AND LIABILITIES OF THE COMMUNITY.

1272. The assets of the community consist:

1. Of all the moveable property which the consorts possess on the day when the marriage is solemnized, and also of all the moveable property which they acquire during marriage, or which falls to them, during that period, by succession or by gift, if the donor or testator have not otherwise provided;

2. Of all the fruits, revenues, interests, and arrears, of whatsoever nature they may be, which fall due or are received during the marriage, and arise from proper-

ty which belonged to the consorts at the time of their marriage, or from property which has accrued to them during marriage, by any title whatever;

3. Of all the immoveables they acquire during the marriage. — N. 1401.

1273. All immoveables are deemed to be joint acquests of the community, if they be not proved to have belonged to one of the consorts, or to have been in his legal possession, previously to the marriage, or to have fallen to him subsequently by succession or other equivalent title. — N. 1402.

1274. Mines and quarries are subject as regards community, to the rules laid down concerning them, in the title *Of Usufruct, Of Use and Occupation.*

The product of such mines and quarries as are opened during the marriage, upon the private property of one of the consorts, does not fall into the community; but such as were opened and worked previously to the marriage, may continue to be worked for the benefit of the community. — N. 1403. — C. 460.

1275. The immoveables which the consorts possess on the day when the marriage is solemnized, or which fall to them during its continuance, by succession or an equivalent title, do not enter into the community.

Nevertheless, if, after the contract of marriage in which community is stipulated, and before the marriage is solemnized, one of the consorts purchase an immoveable, the immoveable purchased in such interval, falls into the community; unless the purchase has been made in execution of some clause of the contract, in which case it is regulated according to the agreement.— N. 1404.

1276. Gifts by contract of marriage, those which are in contemplation of death included, gifts during marriage, and legacies, made by ascendants of one of the consorts, either to the consort entitled to inherit from them or to the other, are deemed, as regards immoveables, unless there is an express declaration to the contrary, to be made to the consort entitled to inherit, and are his private property, as being acquired under a title equivalent to succession.

The same rule applies even when the gift or the legacy, in its terms, is made to both consorts jointly.

All gifts and legacies thus made to the consorts jointly, or to one of them, by others than ascendants, come under the contrary rule, and fall into the community, unless they have been expressly excluded. — N. 1405.

1277. Immoveables abandoned or ceded to one of the

consorts, by his father or mother, or any other ascendant, either in satisfaction of debts due him by the latter, or subject to the payment of the debts due by the donor to strangers, do not fall into the community; saving compensation or indemnity. — N. 1406.

1278. Immoveables acquired during marriage, in exchange for others which belong to one of the consorts, do not enter into the community, and are substituted in the place and stead of the immoveables thus alienated; saving compensation if a difference have been paid. — N. 1407.

1279. A purchase made during marriage, under title of licitation, or otherwise, of a portion of an immoveable, in which one of the consorts owned an undivided share, does not constitute a joint acquest; saving the right of the community to be indemnified for the amount withdrawn from it, to make such purchase.

Where the husband, alone and in his own individual name, acquires by purchase or by adjudication, part or the whole of an immoveable, in which the wife owned an undivided share, she has the option, at the dissolution of the community, either of abandoning the immoveable to the community, which then becomes her debtor for her share in the price, or of taking back the immoveable and refunding to the community the price of the purchase.— N. 1408.

1280. The liabilities of the community consist:

1. Of all the moveable debts due by the consorts on the day when the marriage was solemnized, or by the successions which fall to them during its continuance; saving compensation for such as are connected with immoveables which are the private property of one or other of the consorts;

2. Of the debts, whether of capital sums, arrears, or interest, contracted by the husband during the community, or by the wife, with the consent of the husband; saving compensation in cases where it is due;

3. Of the arrears and interest only of such rents and debts as are personal to either of the two consorts;

4. Of the repairs which attach to the usufruct of such immoveables as do not fall into the community;

5. Of the maintenance of the consorts, of the education and support of the children, and of all the other charges of marriage. — N. 1409. — C. 1396 et s.

1281. The community is liable for the moveable debts contracted by the wife before marriage, only in so far as they are established by an authentic act anterior to the marriage, or by an act which before that event had acquired a certain date, either by

means of registration or of the death of one or more of its signers, or other sufficient proof, except in commercial matters, in which proof may be made according to the provisions of articles 1233, 1234 and 1235.

Creditors of the wife, who claim under acts the date of which has not been established as above stated, cannot sue her for their payment, before the dissolution of the community.

The husband who claims to have paid a debt of this nature, for his wife, cannot demand repayment of it either from her or from her heirs. — N. 1410. — C. 1225.

1282. Debts due by a succession composed of moveable property only, which has fallen to the consorts during marriage, are entirely chargeable to the community. — N. 1411.

1283. Debts due by a succession composed of immoveables only, which falls to one of the consorts during marriage, are not chargeable to the community; saving the right of the creditors to be paid out of the immoveables of the succession.

Nevertheless, if such succession have fallen to the husband, the creditors have a right to be paid either out of his private property or even out of that of the community; saving, in the second case, the compensation due to the wife or her heirs. — N. 1412.

1284. If a succession composed of immoveables only have fallen to the wife, and she have accepted it with the consent of her husband, the creditors have a right to be paid out of all the property which belongs to her; but if she have accepted it only under judicial authorization, upon the refusal of the husband, the creditors, in case the property of the succession proves insufficient, have no recourse upon her other property until the dissolution of the community.— N. 1413. — C. 643.

1285. When a succession which has fallen to one of the consorts consists partly of moveable property and partly of immoveables, the debts due by such succession are chargeable to the community to the extent only of the portion of the debts to the payment of which the moveable property is liable to contribute, regard being had to the value of such property as compared with that of the immoveables.

Such contributory portion is determined according to the inventory which the husband is bound to make, either in his own right, if the succession concern him personally, or as directing and authorizing the actions of his wife, if the succession be one that has fallen to her. — N. 1414.

1286. In the absence of an inventory, and in all cases where the omission to make

one is prejudicial to the wife, she or her heirs may, at the dissolution of the community, sue for lawful compensation, and even make proof, either by deeds and private writings, or by witnesses, and, if necessary, by general rumor, of the description and value of the moveable property not inventoried. — N. 1415.

1287. The provisions of article 1285 do not deprive the creditors of a succession composed partly of moveable property and partly of immoveable of their right to be paid out of the property of the community, whether the succession has accrued to the husband, or has fallen to the wife and has been accepted by her with the consent of her husband; the whole, subject to the respective compensations.

The same rule applies if the succession have been accepted by the wife under judicial authorization only, and the moveable property belonging to it have nevertheless been mixed up with those of the community without a previous inventory. — N. 1416.

1288. If the succession have been accepted by the wife under judicial authorization only, upon the refusal of the husband, and an inventory have been made, the creditors can sue for their payment, only out of the property, whether moveable or immoveable, of such succession, and, if it should prove insufficient, they must for the remainder await the dissolution of the community. — N. 1417.

1289. The rules established by article 1282 and the articles which follow it, govern the debts attached to a gift, as well as those which attach to a succession. — N. 1418.

1290. The creditors have a right to be paid the debts contracted by the wife, with the consent of the husband, either out of the property of the community, or out of that of the husband or of the wife; saving the compensation due to the community, or the indemnity due to the husband. — N. 1419, 1426.

1291. All debts which the wife contracts only in virtue of a general or special power of attorney from her husband, are chargeable to the community; and the creditors cannot prosecute their payment either against the wife or against her personal property. — N. 1420.

§ 2. OF THE ADMINISTRATION OF THE COMMUNITY AND OF THE EFFECT OF THE ACTS OF EITHER CONSORT, IN RELATION TO THE CONJUGAL ASSOCIATION.

1292. The husband alone administers the property of the community. He may sell, alienate, or hypothecate it

without the concurrence of his wife.

He may even alone dispose of it, either by gift or otherwise *inter vivos*, provided it is in favor of persons who are legally capable, and without fraud. — N. 1421, 1422. — C. 205, 692, 1393.

1293. One consort cannot, to the prejudice of the other, bequeath more than his share in the community.

The bequest of an object belonging to the community is subject to the rules which apply to the bequest of a thing of which the testator is only part owner.

If the thing have fallen into the share of the testator and be found in his succession, the legatee has a right to the whole of it. — N. 1423. — C. 882, 883.

1294. Pecuniary condemnations, incurred by the husband for criminal offences or misdemeanors, may be recovered out of the property of the community. Those incurred by the wife can be recovered only out of her property, and after the dissolution of the community.— N. 1424.

1295. Repealed by 6 Ed. VII. c. 38, s. 2.

1296. Acts done by the wife without the consent of her husband, even when she is judicially authorized, do not affect the property of the community beyond the amount of the benefit it derives from them, unless she contracts as a public trader, and for the purposes of her trade. — N. 1426. — C. 179.

1297. [A wife cannot, without judicial authorization, obligate herself nor bind the property of the community, even for the purpose of releasing her husband from prison, or of establishing their common children, in the case of his absence.] — N. 1427. — C. 177 et s.

1298. The husband has the administration of all the private property of his wife.

He may exercise, alone, all the moveable and possessory actions which belong to his wife.

He cannot, without her consent, dispose of the immoveables which belong to her.

He is responsible for all deteriorations which his wife's private property may suffer for want of conservatory acts. — N. 1428. — C. 692, 1393, 1394.

1299. Leases of the wife's property, made by her husband alone, cannot exceed nine years; she is not bound, after the dissolution of the community, to maintain those which have been made for a longer term. — N. 1429.

1300. Leases of property of the wife for nine years or for a shorter term, which have been made or renewed by the husband alone more than a year in advance of the expiration of the pend-

ing lease, do not bind the wife, unless they come into operation before the dissolution of the community. — N. 1430.

1301. A wife cannot bind herself either with or for her husband, otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect, "saving the rights of creditors who contract in good faith". — 4 Ed. VII, c. 38, s. 2.—N. 1431.—C. 1374.

1. Article 1301 of the Civil Code never applied to purchases, sales, or exchanges of immoveable property or to emphyteutic leases made by married women. — 4 Ed. VII, c. 38, s. 2.

2. Article 1301 of the said code is amended by adding thereto the following words: "saving the rights of creditors who contract in good faith;

3. This act shall come into force on the day of its sanction but shall not affect cases then pending. — 4 Ed. VII, c. 38, s. 3.

1302. A husband who contracts obligations for the individual affairs of his wife, has a recourse against her property in order to obtain the reimbursement of what he is obliged to pay by reason of such obligations. — N. 1432. — C. 1366.

1303. If an immoveable or other object belonging exclusively to one of the consorts be sold, and the price of it be paid into the community and be not invested in replacement, or if the community receive any other thing which belongs exclusively to one of the consorts, such consort has a right to pretake such price or the value of the thing which has thus fallen into the community. — N. 1433.

1304. If, on the contrary, moneys have been withdrawn from the community and have been used to improve or to free from incumbrance an immoveable belonging to one of the consorts, or have been applied to the payment of his individual debts, or for his exclusive benefit, the other consort has a right to pretake by way of compensation, out of the property of the community, a sum equal to the moneys thus appropriated. — N. 1433, 1437.— C. 1156 § 5.

1305. The replacement is perfect, as regards the husband, whenever, at the time, he declares that he makes the purchase with moneys arising from the alienation of an immoveable which belonged to himself alone, or for the purpose of replacing such immoveable. — N. 1434.

1306. The declaration of the husband, that the purchase is made with moneys arising from an immoveable sold by his wife and for the purpose of replacing it, is not sufficient, if such replacement have not been formally

accepted by the wife, either by the deed of purchase itself, or by some other subsequent act made before the dissolution of the community. — N. 1435.

1307. The compensation for the price of an immoveable belonging to the husband can be claimed only out of the mass of the community; that for the price of an immoveable belonging to the wife, may be claimed out of the private property of the husband, if the property of the community prove insufficient.

In all cases, such compensation consists in the price brought by the sale and not in the real or conventional value of the immoveable sold. — N. 1436.

1308. If the consorts have jointly benefited their common child, without mentioning the proportion in which they each intended to contribute, they are deemed to have intended to contribute equally, whether such benefit has been furnished or promised out of the effects of the community, or out of the private property of one of the consorts; in the latter case, such consort has a right to be indemnified out of the property of the other, for one half of what he has so furnished, regard being had to the value which the object given had at the time of the gift. — N. 1438.

1309. Any benefit conferred by the husband alone upon a common child is chargeable to the community, and if the wife accept the community she bears one half, unless the husband has declared expressly that he charged himself with the whole or with more than the half of such benefit. — N. 1439.

§ 3. OF THE DISSOLUTION OF THE COMMUNITY AND OF ITS CONTINUATION IN CERTAIN CASES.

1. OF THE DISSOLUTION OF THE COMMUNITY.

1310. The community is dissolved:

1. By natural death;

2. Repealed by 6 Ed. VII, c. 38, s. 2.

3. By separation from bed and board;

4. By separation of property;

5. By the absence of one of the consorts, in the cases and within the restrictions set forth in articles 109 and 110. — N. 1441. — C. 36, 208, 209.

1311. Separation of property can only be obtained judicially, when the interests of the wife are imperilled and the disordered state of the husband's affairs gives reason to fear that his property will not be sufficient to satisfy what the wife has a right to receive or to get back.

All voluntary separations are null. — 60 V., c. 50, s. 22. — N. 1443. — P. 1090 et s.

1312. Separation of property, although judicially

ordered, has no effect so long as it has not been carried into execution in the manner stated in the Code of Civil Procedure. — 60 V., c. 50, s. 23. — N. 1444. — P. 1098.

1313. The judgment of separation as to property must be inscribed in the manner prescribed in the Code of Civil Procedure. — 60 V., c. 50, s. 24. — N. 1145. — P. 1097.

1314. The judgment which declares the separation of property has a retroactive effect to the day of the institution of the action. — N. 1445.

1314*a*. The wife who sues for separation may accept or renounce the community, according to circumstances, and if the husband fails to make an inventory, she may, upon being authorized, have one made, if she has not renounced.

If she accepts, the partition is effected in the manner provided in the title *Of Marriage Covenants*. — 60 V., c. 50, s. 25.

1314*b*. The wife's renunciation of the community must be registered in the registry office of the division in which the husband was domiciled at the time when the suit was brought, or, if the husband was not then domiciled in the Province, in the registry office of the division in which the consorts had their last common domicile before the institution of the action. — *Ibid.*

1314*c*. When the reprises of the wife consist of moveable property, the husband may oblige her to invest the proceeds thereof, or a portion of the same, in the purchase of immoveables. — *Ibid.*

1314*d*. If the husband gives up immoveables to his wife in payment of her reprises, she must apply for and obtain a judgment of confirmation of the deed by which he does so, according to the formalities prescribed in the Code of Civil Procedure. — *Ibid.*

1314*e*. If the amount at which the rights of the wife have been determined is not voluntarily paid, execution may be enforced as in ordinary cases.

Nevertheless, the husband may compel the wife to receive immoveables in payment, at a valuation by experts, provided such immoveables are available and do not prejudice her interests. — *Ibid.*

1315. The separation can be demanded only by the wife herself; her creditors cannot demand it, even with her consent.

Nevertheless, in the case of insolvency of the husband, they may exercise the rights of their debtor, to the extent of the amounts due them. — N. 1446. — C. 1031. — P. 1094.

1316. The creditors of the husband may adopt proceed-

ings against a separation of property which has been pronounced, or even executed, in fraud of their rights; they may even intervene in the suit in which it is demanded, in order to contest it. — N. 1447.

1317. The wife who has obtained a separation of property must contribute in proportion to her means and to those of her husband, to the expenses of the household as well as to those of the education of their common children. She must bear these expenses alone if nothing remain to the husband.— N. 1448. — C. 1423.

1318. The wife, when separated either from bed and board or as to property only, regains the uncontrolled administration of her property. She may dispose of and alienate her moveable property. She cannot alienate her immoveables without the consent of her husband or, upon his refusal, without being judicially authorized. — N. 217, 219, 1449. — C. 177 et s., 210, 1422, 1424.

1319. The husband is not responsible for the omission to invest the price of, or to replace the immoveable alienated by his wife under judicial authorization, unless he has been a party to the contract, or unless the moneys are proved to have been received by him, or to have accrued to his benefit.

He is answerable for the omission to invest or to replace, if the sale have been made in his presence and with his consent. — N. 1450.

1320. Community dissolved by separation from bed and board, or by separation of property only, may be re-established, with the consent of the parties. In the first case, the return of the wife into the house of the husband legally effects such re-establishment; in the second case, it can only be effected by an act passed before notaries as an original, a copy of which is deposited in the office of the prothonotary of the court which rendered the judgment of separation, and is joined to the record in the case; and mention of such deposit must be made in the register, at the end of such judgment, as also upon the list whereon the separation is inscribed pursuant to article 1313. — N. 1451. — C. 217.

1321. In the case of the preceding article, the community so re-established resumes its effect from the day of the marriage; things are replaced in the same condition as if there had been no separation; without prejudice, however, to such acts as the wife may have done in the interval, in conformity with article 1318.

Every agreement by which the consorts re-establish their community upon conditions different from those by which

it was previously governed, is void. — N. 1451.

1322. The dissolution of the community effected by separation, either from bed and board or as to property only, does not give rise to the rights of survivorship of the wife, unless the contrary has been expressly stipulated in the contract of marriage. — N. 1452. — C. 208, 1404, 1438.

II. OF THE CONTINUATION OF THE COMMUNITY.

[*Articles* 1323 *to* 1337, *both inclusive, are replaced by articles* 1323 *to* 1332, *as follows*]: 60 V., c. 52 § 1.

1323. After the dissolution of the community by death and in the absence of any will to the contrary, the surviving consort has the enjoyment of the property of the community coming to their children from the deceased consort; such usufruct lasts as to each child until he is of the age of eighteen years or until he is emancipated. — N. 384.

1324. The obligations incurred by this enjoyment are:

1. Those to which usufructuaries are held;

2. The food, maintenance and education of the children, according to their fortune;

3. The payment of arrears or interest on capital;

4. The funeral expenses, and those of the last illness of the predeceased consort. — N. 385. — C. 463 et s.

1325. This enjoyment ceases in the event of a second marriage. — N. 386.

1326. It does not extend to the property given or bequeathed upon the express condition that the father and mother shall not enjoy it. — N. 387.

1327. Within the three months next after the decease of one of the consorts, the survivor is obliged to make an inventory of the common property and effects. — N. 1456. — P. 1387 et s.

1328. The inventory must be authentic, be made in the presence of a person qualified to contest, and be judicially closed within three months after its completion. — P. 1398.

1329. The survivor, upon petition presented to a judge of the Superior Court within the delay fixed by article 1327, may, in the discretion of the judge, obtain an enlargement of the said delay.

1330. The want of an inventory within the delay mentioned causes the surviving consort to lose the enjoyment of the revenue of his minor children. — N. 1442.

1331. The subrogate tutor, who has not compelled the survivor to make an inventory within the delays, is jointly and severally responsible with him for all the condemnations that may

be pronounced in favour of the minors. — N. 1442.

1332. The subrogate tutor may demand that the usufruct by the surviving consort do cease if the latter does not fulfil the above obligations resulting from his usufruct.

In default of the subrogate tutor so demanding that the usufruct do cease, any relation of the minor to the degree of cousin germain inclusive, may demand the appointment of a tutor *ad hoc* for the purpose of prosecuting such demand. — 1 Ed. VII, c. 32.

The provisions of the act 60 Victoria, chapter 52, do not affect communities which were dissolved before the coming into force of the said act, which are and continue to be governed by the rules respecting continuation of community as if the said statute had not been passed.

2. This act shall come into force on the day of the sanction.

§ 4. OF THE ACCEPTANCE OF THE COMMUNITY AND OF THE RENUNCIATION THAT MAY BE MADE THEREOF, WITH THE CONDITIONS RELATIVE THERETO.

1338. After the dissolution of the community, the wife or her heirs or legal representatives, have a right either to accept or renounce it; any agreement to the contrary is void. — N. 1453.

1339. A wife who has intermeddled with the property, cannot renounce the community.

Acts of mere administration or of a conservatory nature do not constitute intermeddling. — N. 1454.

1340. A wife of full age who has once assumed the quality of common as to property, can no longer renounce it, nor be relieved from such quality, unless there has been fraud on the part of the heirs of the husband. — N. 1455.

1341. [If the wife be under age, she cannot accept the community without the assistance of her curator, and the authorization of a judge, upon the advice of a family council; when made with these formalities, the acceptance is irrevocable, and has the same effect as if the wife had been of age.] — C. 314, 317, 322.

1342. The wife surviving her husband must, within three months from his death, cause a faithful and correct inventory of all the property of the community to be made in the presence of the heirs of the husband, or after having duly summoned them.

[This inventory must be made in notarial form, as an original, and be judicially closed in the manner required by article 1324, in order to prevent the continuation of the community.] — N.

1456. — C. 1328. — P. 1387 et s., 1398.[1]

1343. The wife may however renounce the community, without making an inventory, in the following cases: when the dissolution takes place during the lifetime of the husband; when the heirs of the latter are in possession of all the property; when an inventory has been made at their instance, or one has been made shortly before the death of the husband; when a general seizure and sale of the property of the community have been recently made, or when it has been established by an official return that none existed.

1344. Besides the three months allowed the wife to make the inventory, she has, in order to deliberate upon her acceptance or repudiation, a delay of forty days, which commence to run from the expiration of the three months, or from the closing of the inventory, if it have been completed within the three months. — N. 795, 1457. — P. 177 § 1, 178.

1345. Within these delays of three months and forty days, the wife must make her renunciation, by means of an act in notarial form, or of a judicial declaration, which the court orders to be recorded. — N. 1457.

1346. The wife who is sued as being in community, may nevertheless, according to circumstances, obtain from the court an extension of the delays established by the foregoing articles.—N. 1458.

1347. The wife who has neither made an inventory nor renounced within the delays above prescribed or granted, is not therefor precluded from doing so; she is, on the contrary, allowed to do so, so long as she has not intermeddled or has not acted as being in community; but she can be sued as being in community so long as she has not renounced, and she is liable for the costs incurred against her up to the time of such renunciation. — N. 1459. — C. 1339.

1348. The widow who has abstracted or concealed any of the effects of the community is declared to be in community, notwithstanding her renunciation; the same rule applies to her heirs. — N. 1460. — C. 1364.

1349. If the widow die before the expiration of the three months, without having made or completed the inventory, her heirs have, in order to make and complete it, a further delay of three months, reckoning from her death, and of forty days after the closing of the inventory, in order to deliberate.

If the widow die after completing the inventory, her heirs have, in order to

[1] As to closing of the inventory, see now C. C. 1328.

deliberate, a fresh delay of forty days from her death.

They may moreover in all cases renounce the community, according to the forms established with regard to the wife, and articles 1346 and 1347 are applicable to them. — N. 1461.

1350. Repealed by 6 Ed. VII, c. 38, s. 2.

1351. The creditors of the wife may impugn the renunciation which she or her heirs may have made in fraud of their claims and may accept the community in their own right.

In such case, the renunciation is annulled only in favor of the creditors and to the extent of the amount of their claims. It is not annulled in favor of the wife or of her heirs who have renounced. — N. 1464. — C. 1031 et s.

1352. The widow, whether she accepts or renounces, has a right, during the delays which are prescribed or allowed her in order to make the inventory and to deliberate, to sustain herself and her domestics, upon the provisions then existing, and in default of these by means of loans obtained on account of the community, subject to the condition of making a moderate use thereof.

She owes no rent for her occupation, during these delays, of the house in which she remains after the death of her husband, whether such house belongs to the community or to the heirs of the husband, or is held under lease; in the last case the wife does not contribute to the payment of the rent during these delays but it is taken out of the mass. — N. 1465. — C. 1383.

1353. When the community is dissolved by the previous death of the wife, her heirs may renounce it within the delays and according to the forms prescribed by law with regard to the surviving wife, saving that they are not obliged for that purpose to make an inventory. — N. 1466.

§ 5. OF THE PARTITION OF THE COMMUNITY.

1354. After the acceptance of the community by the wife or her heirs, the assets are divided and the liabilities borne in the manner hereinafter determined. — N. 1467.

1. OF THE PARTITION OF THE ASSETS.

1355. The consorts or their heirs return into the mass of the community all that they owe it by way of compensation or indemnity, according to the rules above prescribed in the second paragraph of this section. — N. 1468.

1356. Each consort or his heirs return likewise the sums drawn from the community, or the value of the property taken therefrom by such consort, in order to endow a child of another marriage, or to endow personally their common child. — N. 1469.

1357. Out of the mass of the community each consort or his heirs pretake:

1. Such of his private property as did not enter into the community, if it exist in kind, or such property as has been acquired in replacement of it;

2. The price of such of his immoveables as have been alienated during the community and have not been replaced;

3. The indemnities due him by the community.—N. 1470.

1358. The pretakings of the wife take precedence of those of the husband. They are effected, as regards such property as no longer exists in kind, first upon the ready money, next upon the moveable property, and subsidiarily upon the immoveables of the community, in the last case, the choice of the immoveables is left to the wife and to her heirs. — N. 1471.

1359. The husband takes his reprises only upon the property of the community. The wife and her heirs, in case the community proves insufficient, may exercise theirs upon the private property of the husband. — N. 1472. — C. 1307, 1383.

1360. The replacements and compensations due by the community to the consorts, and the compensations and indemnities due by them to the community, bear interest, by law, from the day of its dissolution. — N. 1473.

1361. After the pretakings have been effected and the debts have been paid out of the mass, the remainder is divided equally between the consorts or their representatives. — N. 1474.

1362. If the heirs of the wife be divided, so that some have accepted and others have renounced the community, those who have accepted cannot take out of the property falling to the wife's share any more than they would have received if all had accepted.

The residue remains with the husband, who is liable toward the heirs who have renounced for such rights as the wife might have exercised in case of renunciation, but only to the extent of the hereditary share of each heir who has thus renounced. — N. 1475.

1363. The partition of the community, in all that regards its forms, the licitation of immoveables when there is occasion for it, the effects of the partition, the warranty which results from it, and the payment of differences, is subject to all the rules established in the title

Of Successions for the partition among coheirs. — N. 1476.

1364. The consort who has abstracted or concealed effects belonging to the community, forfeits its share of such effects. — N. 1477. — C. 1348.

1365. After the partition has been effected, if one of the consorts be the personal creditor of the other, as when the price of a property of the former has been applied to the payment of a personal debt of the other, or for any other cause, he may prosecute his claim out of the share of the community allotted to his debtor or out of the personal property of such debtor. — N. 1478.

1366. The personal claims which the consorts may have to enforce against each other bear interest only according to the ordinary rules. — N. 1479.

1367. Gifts made by one consort to the other are not taken out of the community, but only from the share of the donor therein, or from his private property. — N. 1480.

1368. The mourning of the wife is chargeable to the heirs of her deceased husband.

The cost of such mourning is to be regulated according to the fortune of the husband.

It is due even to the wife who renounces the community. — N. 1481.

11. OF THE LIABILITIES OF THE COMMUNITY AND OF THE CONTRIBUTION TO THE DEBTS.

1369. The debts of the community are chargeable one half to each of the consorts or his heirs.

The expenses of seals, inventories, sales of moveable property, liquidation, licitation and partition, are included in such debts. — N. 1482.

1370. The wife even though she accepts the community, is not liable for its debts, either toward her husband or toward creditors, beyond the amount of the benefit she derives from it; provided she has made a good and faithful inventory and has rendered an account both of what is contained in such inventory and of what has fallen to her in the partition. — N. 1483.

1371. The husband is liable toward the creditors for the whole of the debts of the community which were contracted by himself; saving his recourse against his wife or her heirs, if they accept, for the half of such debts, or for an amount equivalent to the benefit which they have derived from the community. — N. 1484.

1372. He is liable only for half of such personal debts of his wife as were chargeable

to the community, unless the share coming to the wife proves insufficient to pay her half. — N. 1485.

1373. The wife may be sued for the whole of the debts which are attributable to herself and have fallen into the community; saving her recourse against the husband or his heirs, for half of such debts, if she accept, and for the whole, if she renounce.— N. 1486. — C. 1382.

1374. The wife who, during the community, binds herself for or together with her husband, even jointly and severally, is held to have done so only in her quality of common as to property; if she accept she is personally bound for her half only of the debt thus contracted, and she is not at all liable if she renounce. — N. 1487. — C. 1301, 1382.

1375. The wife who has paid more than her half of a debt of the community, cannot get back what she has overpaid, unless the receipt expresses that what she paid was for her half.

But she retains her recourse against her husband or his heirs. — N. 1488.

1376. The consort who, by reason of the enforcing of a hypothec upon the immoveable which has fallen to his share, is sued for the whole of a debt of the community, has his legal recourse for one half of such debt against the other consort or his heirs. — N. 1489.

1377. Notwithstanding the foregoing provisions, either of the copartitioners may, by the partition, be charged with the payment of a proportion of the debts, other than half, or even with the payment of the whole. — N. 1490.

1378. All that has been declared above in respect of the husband or of the wife applies to the heirs of either, and such heirs exercise the same rights and are subject to same actions as the consort whom they represent. — N. 1391.

§ 6. OF RENUNCIATION OF THE COMMUNITY AND OF ITS EFFECTS.

1379. The wife who renounces, cannot claim any share in the property of the community, not even in the moveable property she herself brought into it. — N. 1492.

1380. [She may, however, retain the wearing apparel and linen in use for her own person, exclusive of all other jewelry than her wedding presents.] — N. 1492.

1381. The wife who renounces has a right to take back:

1. The immoveables belonging to her, if they exist in kind, or those which have

been acquired to replace them;

2. The price of her immoveables which have been alienated, and the replacement of which has not been made and accepted as mentioned above in article 1306;

3. The indemnities which may be due to her from the community. — N. 1493.

1382. The wife who renounces is freed from all contribution to the debts of the community, both as regards her husband and as regards creditors, even those towards whom she bound herself jointly and severally with her husband.

She remains liable however for debts which are attributable to herself and have fallen into the community, saving, in such case, her recourse against her husband or his heirs. — N. 1494. — C. 1373, 1374.

1383. She may exercise all the rights and reprises hereinabove enumerated, as well against the property of the community as against the private property of her husband.

Her heirs may do the same, except as regards the pretaking of linen and wearing apparel, and as regards lodging and maintenance during the delays allowed for the inventory and for deliberating; which rights are purely personal to the surviving wife. — N. 1495. — C. 1359.

SECTION II.

OF CONVENTIONAL COMMUNITY AND OF THE MOST ORDINARY CONDITIONS WHICH MAY MODIFY OR EVEN EXCLUDE LEGAL COMMUNITY.

1384. The consorts may modify the legal community by all kinds of agreements, not contrary to articles 1258 and 1259.

The principal modifications are those which result from stipulating:

1. By way of realization, that the moveable property either present or future, shall not enter into the community or shall only enter for part;

2. By way of mobilization, that the whole or a portion of the immoveables present or future shall be included in it;

3. That the consorts shall be separately liable for their debts contracted before marriage;

4. That in case of renunciation, the wife may take back from the community, free and clear from all claims, whatever she brought into it;

5. That the survivor shall have a preciput;

6. That the consorts shall have unequal shares;

7. That universal community, or a community by general title, shall exist between them. — N. 1497. — C. 1262, 1413, 1414.

§ 1. OF THE CLAUSE OF REALIZATION.

1385. By the clause of realization the parties exclude from the community, either wholly or in part, the moveable property which would otherwise fall into it.

When they stipulate that they will reciprocally put into the community moveable property to the extent of a certain sum or of a determinate value, they are, by such stipulation alone, presumed to have reserved the remainder. — N. 1500. — C. 1272 § 1, 1435.

1386. This clause renders the consort debtor to the community for the amount which he promised to contribute, and obliges him to substantiate such contribution. — N. 1501.

1387. The contribution is sufficiently substantiated, as regards the husband, by the declaration made in the contract of marriage that his moveable property is of a certain value.

It is sufficiently substantiated, as regards the wife, by the discharge which the husband gives either to her or to those who made the endowment.

If such contribution be not claimed within ten years the wife is presumed to have made it; saving the right of proving the contrary. — N. 1502.

1388. After the dissolution, each consort has a right to take back, before partition, out of the property of the community, the value of the moveable property which he brought into it at the marriage or which accrued to him after it, over and above what he bound himself to bring into the community. — N. 1503.

1389. [In the case of the preceding article, the moveable property which accrues to either consort during marriage must be established by an inventory or some other equivalent title.

As regards the husband, in default of such inventory or title, he forfeits his right to take back the moveable property which has fallen to him during the marriage.

As regards the wife, on the contrary, she or her heirs are, in such case, admitted to make proof either by titles or by witnesses, or even by common rumor, of the moveable property, thus accrued to her.] — N. 1504. — C. 1286.

§ 2. OF THE CLAUSE OF MOBILIZATION.

1390. The clause of mobilization is that by which the consorts, or either of them, bring into the community the whole or a portion of their immoveables, whether present or future. — N. 1505. — C. 1435.

1391. Mobilization is either general or special.

It is general when the consorts declare their intention of being in community as to all their property, or that all successions falling to them shall belong to the community.

It is particular when they have only undertaken to bring into the community some determinate immoveables.

1392. Mobilization may be either determinate or indeterminate.

It is determinate, when the consort declares that he brings as moveable into the community, a certain immoveable, either wholly or to the extent of a certain sum. It is indeterminate when the consort simply declares that he brings into the community his immoveables to the extent of a certain sum. — N. 1506.

1393. The effect of determinate mobilization is to convert the immoveable or immoveables affected by it into community property, as moveables themselves would be.

When the immoveable or immoveables of the wife are contributed as moveable in whole, the husband may dispose of them as of the other effects of the community and alienate them entirely .

If the immoveable be contributed as moveable only to the extent of a certain sum, the husband cannot alienate it without the consent of his wife; he may however hypothecate it without such consent, but only to the extent of the portion so contributed. — N. 1507. — C. 1292, 1298.

1394. Indeterminate mobilization does not confer upon the community the ownership of the immoveables affected by it, its effect is merely to oblige the consort who has undertaken it to include in the mass, at the time of the dissolution, some of his immoveables to the extent of the sum which he has promised.

The husband, without the consent of his wife, cannot alienate, in whole or in part, the immoveables subjected to indeterminate mobilization, but he may hypothecate them to the extent of such mobilization. — N. 1508. — C. 1298.

1395. The consort who has contributed an immoveable as moveable, has a right, when the partition takes place, to retain it, on account of his share, at the price it is then worth, and his heirs have the same right. — N. 1509.

§ 3. OF THE CLAUSE OF SEPARATION OF DEBTS.

1396. The clause by which the consorts stipulate that they will separately pay their personal debts, obliges them to account to each other respectively, at the time of

the dissolution of the community, for such debts as are established to have been paid by the community in discharge of the consort who was liable for them.

This obligation is the same, whether an inventory has been made or not; but if the moveable property brought in by the consorts have not been determined by an inventory or an authentic statement anterior to the marriage, the creditors of either consort without regard to any distinctions that may be claimed, have a right to be paid out of such property, as well as out of all the other property of the community.

The creditors have the same right with regard to such moveable property as may have fallen to the consorts during the community, if likewise it have not been determined by an inventory or authentic statement. — N. 1510. — C. 1280 et s.

1397. When either of the consorts brings into the community a certain sum or a determinate object, such a contribution implies a tacit agreement that it is not encumbered with debts anterior to the marriage, and he must account to the other for all such incumbrances as lessen its value. — N. 1511.

1398. The clause of separation of debts does not prevent interest and arrears which have accrued since the marriage from being chargeable to the community. — N. 1512. — C. 1280 § 3.

1399. When the community is sued for the debts of one of the consorts, who is declared by the contract to be free and clear from all debts anterior to the marriage, the other consort has a right to an indemnity, to be taken from the share in the community which belongs to the indebted consort, or from his private property; and in case of insufficiency, such indemnity may be prosecuted, by way of warranty, against the parties who made the declaration that such consort was free and clear.

This right of warranty may even be exercised by the husband during the community, if the debt have originated with the wife; saving, in such case, the right of the warrantor to be reimbursed by the wife or her heirs, after the dissolution of the community. — N. 1513.

§ 4. OF THE RIGHT GIVEN TO THE WIFE OF TAKING BACK FREE AND CLEAR WHAT SHE BROUGHT INTO THE COMMUNITY.

1400. The wife may stipulate, that in case of renunciation of the community, she shall take back the whole or a part of what she brought into it either before or since the marriage; but such stipulation cannot extend beyond things formally

specified, nor to other persons than those who are designated.

Thus, the right of taking back the moveable property brought in by the wife at the time of the marriage, does not extend to similar property accrued to her during the marriage.

Thus, the right given to the wife does not extend to the children; and that given to the wife and to the children, does not extend to her ascendant or collateral heirs.

In all cases, the wife can only take back her contributions after deduction has been made of such of her private debts as have been paid out of the community.— N. 1514.

§ 5. OF CONVENTIONAL PRECIPUT.

1401. The clause by which the surviving consort is authorized to pretake, before any partition, a certain sum or a certain quantity of moveable effects in kind, does not take effect in favor of the surviving wife who does not accept the community; unless by the contract of marriage such right is reserved to her, even when she renounces.

Excepting the case of such reservation, preciput can only be taken from the mass to be divided, and not from the private property of the predeceased consort. — N. 1515. — C. 2235.

1402. Preciput is not regarded as a benefit subject to the formalities of gifts, but as a marriage covenant. — N. 1516.

1403. Natural death opens the right to preciput by the sole operation of law.

Second paragraph repealed by 6 Ed. VII, c. 38, s. 2.

1404. When the community is dissolved during the lifetime of the consorts in consequence of separation from bed and board or of separation of property only, such dissolution does not, unless the contrary be stipulated, open the right to preciput in favor of either of the consorts. The right remains suspended until the death of the consort who dies first.

In the interval, the sum or the thing which constitutes the preciput remains provisionally with the husband, from whose succession the wife may claim it, if she have survived him. — N. 1518. — C. 111, 208, 1322, 2235.

1405. The creditors of the community have always a right to cause the effects comprised in the preciput to be sold; saving the recourse of the consort, conformably to article 1401. — N. 1519.

§ 6. OF THE CLAUSES BY WHICH UNEQUAL SHARES IN THE COMMUNITY ARE ASSIGNED TO THE CONSORTS.

1406. The consorts may depart from the equal divi-

sion established by law, either by giving to the surviving consort or his heirs, only a share in the community less than half, or by giving him only a fixed sum in lieu of all rights in the community, or by stipulating that the entire community, in certain cases, shall belong to the surviving consort, or to one of the consorts solely. — N. 1520.

1407. When it is stipulated that the consort or his heirs shall have only a certain share in the community, as a third, a fourth, the consort whose share is so reduced or his heirs bear the debts of the community only in proportion to the share they take in the assets.

The agreement is void if it oblige such consort or his heirs, to bear a greater share, or if it exempt them from bearing a share of the debts equal to that which they take in the assets. — N. 1521.

1408. When it is stipulated that one of the consorts or his heirs shall be entitled only to a certain sum in lieu of all rights of community, the clause is a definitive agreement which obliges the other consort or his heirs to pay the sum agreed upon, whether the community be good or bad, or sufficient or not to pay such sum. — N. 1522.

1409. If the clause establishes this definitive agreement with regard to the heirs only of one of the consorts, such consort, if he survive, has a right to the legal partition by halves. — N. 1523.

1410. The husband or his heirs who, in virtue of the clause mentioned in article 1406, retain the whole of the community, are obliged to pay all its debts. The creditors in such case have no action against the wife or against her heirs.

If it be the wife surviving who, in consideration of a stipulated sum, has the right of retaining the whole of the community against the heirs of the husband, she has the option of either paying such sum and remaining liable for all the debts, or of renouncing the community and abandoning to the heirs of the husband both the property and the debts. — N. 1524.

1411. When the consorts stipulate that the whole of the community shall belong to the survivor, or to one of them only, the heirs of the other have a right to take back what had been brought into the community by the person they represent.

Such a stipulation is but a simple marriage covenant, and is not subject to the rules and formalities applicable to gifts. — N. 1525.

§ 7. OF COMMUNITY BY GENERAL TITLE.

1412. The consorts may establish by their contract of

marriage a general community of their property both moveable and immoveable, present and future, or of all their present property only, or of their future property only. — N. 1526.

PROVISIONS COMMON TO THE ARTICLES OF THIS SECTION.

1413. The above articles do not confine to their precise provisions the stipulations of which conventional community is susceptible.

The consorts may make any other covenants, as mentioned in articles 1257 and 1384. — N. 1527.

1414. Conventional community remains subject to the rules of legal community in all cases where they have not been implicitly or explicitly departed from by the contract. — N. 1528.

§ 8. OF COVENANTS EXCLUDING COMMUNITY.

1415. When the consorts stipulate that there shall be no community, or that they shall be separate as to property the effects of such stipulations are as follows: — N. 1529.

I. OF THE CLAUSE SIMPLY EXCLUDING COMMUNITY.

1416. The clause which declares that the consorts marry without community does not give the wife the right to administer her property, nor to receive the fruits thereof; these are deemed to be contributed by her to her husband to enable him to bear the charges of marriage. — N. 1530. — C. 176 et s.

1417. The husband retains the administration of the moveable and immoveable property of his wife, and as a consequence the right to receive all the moveable property she brings with her, or which accrues to her during the marriage; saving the restitution he is bound to make after its dissolution, or after a separation of property judicially pronounced. — N. 1531. — C. 692.

1418. If, amongst the moveable property brought by the wife or which accrues to her during marriage, there be things which cannot be used without being consumed, an appreciatory statement must be joined to the contract of marriage, or an inventory must be made of them at the time when they so accrued to her, and the husband is bound to give back their value according to the valuation. — N. 1532.

1419. The husband, with regard to such property, has all the rights and is subject to all the obligations of a usufructuary. — N. 1533.

1420. The clause which declares that the consorts marry without community, does not prevent its being

agreed that the wife, for her support and personal wants, shall receive her revenues in whole or in part, upon her own acquittances. — N. 1534.

1421. The immoveables of the wife which are excluded from the community in the cases of the preceding articles are not inalienable.

Nevertheless they cannot be alienated without the consent of the husband, or, upon his refusal, without judicial authorization. — N. 1535.

II. OF THE CLAUSE OF SEPARATION OF PROPERTY.

1422. When the consorts have stipulated by their contract of marriage that they shall be separate as to property, the wife retains the entire administration of her property, moveable and immoveable and the free enjoyment of her revenues. — N. 1536. — C. 176 et s., 1318.

1423. Each of the consorts contributes to the expenses of marriage according to the covenants contained in their contract, and if there be none, and the parties cannot come to an understanding upon the subject, the court determines the contributory portion of each consort according to their respective means and circumstances. — N. 1537. — C. 1317.

1424. The wife cannot in any case, nor by virtue of any stipulation, alienate her immoveables without the special consent of her husband, or, on his refusal, without being judicially authorized.

Every general authorization to alienate immoveables, which is given to the wife either by the contract of marriage or subsequently, is void. — N. 1538. — C. 181.

1425. When the wife who is separated as to property has left the enjoyment of her property to her husband, the latter upon the demand which his wife may make, or upon the dissolution of the marriage, is bound to give up only the fruits which are then existing, and is not accountable for those which, up to such time, have been consumed. — N. 1539.

CHAPTER THIRD.

OF DOWER.

SECTION I.

GENERAL PROVISIONS.

1426. There are two kinds of dower, that of the wife and that of the children.

These dowers are either legal or customary, or prefixed or conventional.

1427. Legal or customary dower is that which the law, independently of any agreement, and as resulting from the mere act of marriage, establishes upon the property of the husband, in favor of the wife as usufructuary, and of the children as owners. — C. 1260.

1428. Prefixed or conventional dower is that which the parties have agreed upon, by the contract of marriage. — C. 1263.

1429. Conventional dower excludes customary; it is however lawful to stipulate that the wife and the children shall have the right to take either the one or the other, at their option.

1430. The option made by the wife, after the opening of the dower, binds the children, who must remain satisfied with whichever dower she has chosen.

If she die without having made the choice, the right of making it passes to the children.

1431. If there be no contract of marriage, or if in that which has been made the parties have not explained their intentions on the subject, customary dower accrues by the sole operation of law.

But it is lawful to stipulate that there shall be no dower, and such a stipulation binds the children as well as the mother.

1432. Dower whether conventional or customary is not regarded as a benefit subject to the formalities of gifts, but as a simple marriage covenant.

1433. The right to conventional dower accrues from the date of the contract of marriage, and the right to customary dower from the date of the celebration, or from the date of the contract if there be one in which it is stipulated.

1434. Customary dower consists in the usufruct for the wife, and the ownership for the children, of one half of the immoveables which belong to the husband at the time of the marriage, and of one half of those which accrue to him during marriage from his father or mother or other ascendants. — C. 954.

1435. Immoveables which the husband has contributed as moveable under a clause of mobilization, in order to bring them into the community, are not subject to customary dower;

Neither are immoveables by fiction, composed of moveable objects which the husband has reserved to himself by the clause of realization in order to exclude them from the community.

1436. The customary dower resulting from a second marriage, when there are children born of the first, consists in a half of the immoveables, not affected by the previous dower, which belong to the husband at the time of the second marriage, or which accrue to him during such marriage from his father or mother or other ascendants.

The rule is the same for all subsequent marriages which the husband may contract, when there are children of previous marriages.

1437. Conventional dower, when there is no agreement to the contrary, also consists in the usufruct for the wife, and the ownership for the children, of the portion of the moveable or immoveable property which constitutes it according to the contract of marriage.

The parties may, however, modify this dower at will; they may stipulate, for example, that it shall belong to the wife in full ownership, to the exclusion of the children, and without return, or that the dower of the latter shall be different from that of their mother.

1438. Dower, whether customary or conventional, is a right of survivorship which opens by the natural death of the husband.

It may however be opened and become exigible by separation from bed and board, or separation of property only, if such effect result from the terms of the contract of marriage.

It may likewise be demanded in the case of the absence of the husband, under the circumstances and conditions expressed in articles 109 and 110. — C. 36, § 8, 208, 1322. — 6 Ed. VII, c. 38, s. 2.

1439. If the wife be alive at the time of the opening of the dower, she enters immediately upon the enjoyment of her usufruct; the children cannot take possession of the property until after her death.

If the wife die first, the children enjoy the dower as owners from the moment of its opening.

Where the wife dies first, if at the death of the husband no children or grandchildren issue of the marriage be living, the dower is extinguished and the property remains in the succession of the husband.

1440. Conventional dower is taken from the private property of the husband.

1441. The wife and the children are seized of their respective rights in the dower from the time it opens, without the necessity of a judicial demand; such a demand is however necessary against subsequent purchasers, in order to give rise, as regards them, to the fruits of the immoveables and the interest of the capital sums, which they have acquired in good faith, and which are subject to or charged with dower. — C. 411, 412, 2235.

1442. Customary dower, and conventional dower when it consists of immoveables, is a real right, and is governed by the law of the place where the immoveables subject to it are situated. C. 6 § 1.

1443. Neither the alienation by the husband of immoveables subject to or charged with dower, nor the charges or hypothecs which

he may have imposed upon them, either with or without the consent of his wife, affect in any manner the rights of the latter or of the children, unless she has expressly renounced in conformity with the following article.

Such alienation and charges are equally without effect, as regards both the wife and the children, even when made in the name and with the consent of the wife, although she be authorized by her husband; subject to the same exception.

1444. The wife who is of age may however renounce her right of dower, whether customary or conventional, upon such immoveables as her husband sells, alienates or hypothecates.

This renunciation may be made either in the act by which the husband sells, alienates or hypothecates the immoveable, or by a separate and subsequent act.

1445. Such renunciation has the effect of discharging the immoveable affected by dower from any claim which the wife may have upon it under that title, and neither she nor her heirs can exercise against any other property of the husband any recourse to be indemnified or compensated for the right thus abandoned; notwithstanding the provisions of this title or any other provisions of this code respecting the replacements, indemnities or compensations which consorts or other parties owe to each other in cases of partition.

1446. As to the dower of the children, it can be exercised only upon immoveables subject to the dower of their mother which have not been alienated or hypothecated by their father during the continuance of the marriage with her renunciation made in the manner prescribed in article 1444.

Children who have attained the age of majority may, after the death of their mother, renounce their dower in all cases in which the latter could have done so herself, and in the same manner with the same effect.

1447. Sales under execution, judgments in confirmation of title, and adjudications in forced licitations, when they take place before the opening of the customary dower, whether such dower results from the law alone, or has been stipulated, do not affect immoveables subject to dower.

Nevertheless if the sale under execution take place at the suit of a creditor whose claim is anterior and preferable to the dower, or if such creditor be collocated upon any of the said proceedings, the alienation or the confirmation is valid and the immoveable is discharged. The creditors whose claims rank subsequently, who in such case receive the surplus of the price, are bound to bring it back if the dower accrues,

and cannot receive the moneys without giving security if the dower be apparent upon the proceedings.

When, as in the first case mentioned in this article, the dower is not extinguished by the sale or the judgment of confirmation, the party to whom the property has been adjudicated or who has obtained the judgment may likewise, when he has been evicted, oblige the creditors who have received the price to bring it back, and if the dower appear upon the proceedings, the creditors are not collocated unless they give security to bring back whatever portion of the dower they may receive. If the creditors refuse to give security the person to whom the property is adjudicated keeps or takes back the amount subject to dower, upon giving security himself that he will repay.

Customary dower, when open, does not fall under the rules of this article. — C. 2116. — P. 781, 785.

1448. If the dower which is not yet open be the conventional dower, whether it consists in an immoveable or in an hypothecary claim, it is subject to the effect of the registry laws, and is extinguished by the sale under execution and the other proceedings mentioned in the preceding articles as in ordinary cases; saving to the parties interested their rights and recourse and the securities to which they may be entitled.

Conventional dower when open is subject to the ordinary rules. — P. 800.

1449. The purchaser of an immoveable which is subject to or hypothecated for dower, cannot prescribe against either the wife or the children so long as such dower is not open.

Prescription runs against children of full age, during the life-time of their mother, from the period when the dower opens. — C. 2235.

SECTION II.

PARTICULAR PROVISIONS AS TO THE DOWER OF THE WIFE.

1450. The conventional dower of the wife is not incompatible with a gift of usufruct made to her by the husband; she enjoys under such gifts the property comprised in them, and takes her dower from the remainder, without diminution or confusion.

1451. If the dower of the wife consist in money or rents, the wife, in order to obtain payment of it from the heirs and representatives of her husband, has all the rights and actions which belong to the other creditors of the succession.

1452. If the dower consist in the enjoyment of a certain

portion of the property of the husband, a partition must be effected between the wife and the heirs of the husband, by which she receives the portion which she has a right to enjoy.

The widow and the heirs have reciprocally an action to obtain this partition, in the case of refusal on the part of either. — C. 689 et s. — P. 1037 et s.

1453. The dowager, like other usufructuaries, has a right to the natural and industrial fruits attached by branch or root to the immoveable subject to dower when such dower opens, without being obliged to refund the expenses incurred by the husband in order to produce them.

The same rule applies to those who enter into the enjoyment of the ownership of such immoveable, after the extinction of the usufruct. — C. 450.

1454. The dowager, as long as she remains a widow, enjoys the dower, whether customary or conventional, upon giving the security of her oath to restore it; but, if she remarry, she is bound to give the same security as any other usufructuary. — C. 464.

1455. If the wife who has remarried cannot give the necessary security, her usufruct becomes subject to the provisions of articles 465, 466 and 467.

1456. The dowager is bound to maintain the leases made by her husband subject to her dower, provided there has been no fraud nor excessive anticipation.

1457. Leases made by her during the term of her enjoyment expire with her usufruct; nevertheless, the farmer or lessee has a right, and may be obliged, to continue in occupation during the remainder of the year which had begun when the usufruct expired, subject to the payment of the rent to the owner. — C. 457.

1458. The dowager, like any other usufructuary, is liable for all the ordinary or extraordinary charges which affect the immoveable subject to dower, or which may be imposed upon it during the term of her enjoyment, as set forth in the title *Of Usufruct, of Use and Habitation.* — C. 471.

1459. She is liable only for the lesser repairs; for the greater repairs, the owner remains liable, unless they have been necessitated by the fault or negligence of the dowager. — C. 468 et s.

1460. The dowager, like every other usufructuary, takes the things which are subject to the dower in the condition in which they are at the time of the opening.

The same rule applies to the dowable children, as regards the property itself, in cases where the usufruct of the wife does not take place.

If they do not take the property until after the expiration of the usufruct, or if at that time there be no dowable children, the succession of the wife is answerable, in the first case to such children, and in the second case to the heirs of the husband, according to the rules which relate to the enjoyment and the obligations of the usufructuary under particular title.

1461. If nevertheless, during the marriage, considerable additions have been made to the thing, the wife cannot enjoy them without paying the excess of value, if her dower consist in ownership, or the interest of such excess, if it be in usufruct.

She may however demand the removal of such additions if it can be effected with advantage and without deteriorating the thing.

If they cannot be removed, the wife may, for the purpose of paying the excess of the value, obtain a licitation.

Dowable children who take the property without their mother having had the usufruct of it, fall under the same rules with regard to such additions.

If during the marriage, the thing subject to dower have suffered deterioration, to the benefit of the husband or of the community, the wife and the children who claim dower are entitled to compensation.

1462. The dower of the wife is terminated like any other usufruct by the causes enumerated in article 479.

1463. The wife may be deprived of her dower by reason of adultery or of desertion.

In either case, an action must have been instituted by the husband, and a subsequent reconciliation must not have taken place; the heirs, in such case, can only continue the action commenced, if it have not been abandoned.

1464. The wife may also be declared to have forfeited her dower by reason of the abuse she has made of her enjoyment, under the circumstances and modifications set forth in article 480.

1465. If the wife be declared to have forfeited her usufruct for any of the causes above mentioned, or if, after the opening of the dower, she renounce it simply and absolutely, the dowable children take the property from the time of the renunciation, or of the forfeiture, if it take place after the opening.

SECTION III.

PARTICULAR PROVISIONS AS TO THE DOWER OF CHILDREN.

1466. The children entitled to dower are those who are

born of the marriage for which it was constituted.

Children of the consorts who were born before the marriage, but are legitimated by it, are deemed to be children of the marriage; so are those who were conceived at the time of their father's death and are born afterwards; and so are also the grandchildren whose father being a child of the marriage, died before the opening of the dower.

Those children only can claim dower who were capable of succeeding to their father at the time of his death.

1467. A child who assumes the quality of heir to his father, even under benefit of inventory, can have no share in the dower.

1468. In order to be entitled to dower, the child is bound to return into the succession of his father all such benefits as he has received from him, in marriage or otherwise, or to take less in the dower.

1469. The dowered children are not bound to pay the debts which have been contracted by their father since the marriage; as to those which were contracted previously, they are only liable hypothecarily for them, with a recourse against the other property of their father.

1470. When conventional dower consists in a sum of money to be paid once for all, it is to all intents deemed moveable.

1471. After the opening of the dower and the termination of the usufruct of the wife, the property composing such dower is divided amongst the children and grandchildren entitled to it, in the same manner as if it had fallen to them by succession.

The shares of those who renounce remain in the succession, and do not increase the shares of the other children who take dower.

TITLE FIFTH.

OF SALE.

CHAPTER FIRST.

GENERAL PROVISIONS.

1472. [Sale is a contract by which one party gives a thing to the other for a price in money which the latter obliges himself to pay for it.

It is perfected by the consent alone of the parties, although the thing sold be not then delivered; subject nevertheless to the provisions con-

tained in article 1027 and to the special rules concerning the transfer of registered vessels.] — N. 1582, 1583.— C. 1025, 2098, 2359 et s.

1473. The contract of sale is subject to the general rules relating to contracts and to the effects and extinction of obligations declared in the title *Of Obligations*, unless it is otherwise specially provided in this code. — N. 1584.

1474. When things moveable are sold by weight, number or measure, and not in the lump, the sale is not perfect until they have been weighed, counted or measured; but the buyer may demand the delivery of them or damages according to circumstances. — N. 1585. — C. 1026, 1060, 1151.

1475. The sale of a thing upon trial is presumed to be made under a suspensive condition, when the intention of the parties to the contrary is not apparent. — N. 1588.

1476. A simple promise of sale is not equivalent to a sale, but the creditor may demand that the debtor shall execute a deed of sale in his favor according to the terms of the promise, and, in default of so doing, that the judgment shall be equivalent to such deed and have all its legal effects; or he may recover damages according to the rules contained in the title *Of Obligations*. — N. 1589.

1477. If a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he who has given the earnest, by forfeiting it, and he who received it, by returning double the amount. — N. 1590. — C. 1235 § 4.

1478. A promise of sale with tradition and actual possession is equivalent to sale.

1479. The expense of the title deed and other accessories to a sale is borne by the buyer, unless it is otherwise stipulated. — N. 1593.

1480. The articles of this title, in so far as they affect the rights of third persons, are subject to the special modifications and restrictions contained in the title *Of Registration of Real Rights.*

1481. Tavern-keepers, or others, selling to persons other than travellers, intoxicating liquors to be drunk on the spot, have no action for the recovery of the price of such liquors.

CHAPTER SECOND.

OF THE CAPACITY TO BUY OR SELL.

1482. The capacity to buy or sell is governed by the general rules, relating to the capacity to contract, contained in chapter first, of the title *Of Obligations*. — N. 1594. — C. 985 et s.

1483. Husband and wife cannot enter into a contract of sale with each other. — N. 1595.

1484. The following persons cannot become buyers, either by themselves or by parties interposed, that is to say:

Tutors or curators, of the property of those over whom they are appointed, except in sales by judicial authority;

Agents, of the property which they are charged with the sale of;

Administrators or trustees, of the property in their charge, whether of public bodies or of private persons;

Public officers, of national property, the sale of which is made through their ministry.

The incapacity declared in this article cannot be set up by the buyer; it exists only in favor of the owner and others having an interest in the thing sold. — N. 1596.— C. 290, 1706. — P. 660, 748.

1485. Judges, advocates, attorneys, clerks, sheriffs, bailiffs and other officers connected with courts of justice, cannot become buyers of litigious rights which fall under the jurisdiction of the court in which they exercise their functions. — N. 1597. — C. 1583.

CHAPTER THIRD.

OF THINGS WHICH MAY BE SOLD.

1486. Everything may be sold which is not excluded from being an object of commerce by its nature or destination or by special provision of law. — N. 1598. — C. 1059.

1487. [The sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles. The buyer may recover damages of the seller, if he were ignorant that the thing did not belong to the latter.] — N. 1599.

1488. The sale is valid if it be a commercial matter, or if the seller afterwards become owner of the thing.

1489. If a thing lost or stolen be bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it, without reimbursing to the purchaser the price he has paid for it. — N. 2280. — C. 2268.

1490. If the thing lost or stolen be sold under the authority of law, it cannot be reclaimed. — C. 2005*a*. — P. 668.

CHAPTER FOURTH.

OF THE OBLIGATIONS OF THE SELLER.

SECTION I.

GENERAL PROVISIONS.

1491. The principal obligations of the seller are: 1. The delivery, and, 2. The warranty of the thing sold. — N. 1603.

SECTION II.

OF DELIVERY.

1492. Delivery is the transfer of a thing sold into the power and possession of the buyer. — N. 1604.

1493. [The obligation of the seller to deliver is satisfied when he puts the buyer in actual possession of the thing, or consents to such possession being taken by him, and all hindrances thereto are removed.] — N. 1605. — C. 1165.

1494. The delivery of incorporeal things is made by the delivery of the titles, or by the use which the buyer makes of such things with the consent of the seller. — N. 1607.

1495. The expenses of the delivery are at the charge of the seller, and those of removing the thing are at the charge of the buyer, unless it is otherwise stipulated. — N. 1608.

1496. The seller is not obliged to deliver the thing if the buyer do not pay the price, unless a term has been granted for the payment of it. — N. 1612.

1497. Neither is the seller obliged to deliver the thing, when a delay for payment has been granted, if the buyer since the sale have become insolvent, so that the seller is in imminent danger of losing the price, unless the buyer gives security for the payment at the expiration of the term. — N. 1613.

1498. The thing must be delivered in the state in which it was at the time of the sale, subject to the rules relating to deterioration contained in the title *Of Obligations.*

From the time of sale all the profits of the thing belong to the buyer.—N. 1614.

1499. The obligation to deliver the thing comprises its accessories and all that has been designed for its perpetual use. — N. 1615. — C. 1574.

1500. The seller is obliged to deliver the full quantity sold as it is specified in the contract, subject to modifications hereinafter specified.— N. 1616. — P. 780.

1501. [If an immoveable be sold with a statement, in whatever terms expressed, of its superficial contents, either at a certain rate by measurement, or at a single price for the whole, the seller is obliged to deliver the whole quantity specified in the contract; if such delivery be not possible, the buyer may obtain a diminution of the price according to the value of the quantity not delivered.

If the superficial contents exceed the quantity specified, the buyer must pay for such excess of quantity, or he may at his option give it back to the seller.] — N. 1617, 1618, 1619.

1502. [In either of the

cases stated in the last preceding article, if the deficiency or excess of quantity be so great, in comparison with the quantity specified, that it may be presumed the buyer would not have bought if he had known it, he may abandon the sale and recover from the seller the price, if paid, and the expenses of the contract, without prejudice in any case to his claim for damages.] — N. 1618, 1619, 1620. — P. 785.

1503. [The rules contained in the last two preceding articles do not apply, when it clearly appears from the description of the immoveable and the terms of the contract that the sale is of a certain determinate thing, without regard to its quantity by measurement, whether such quantity is mentioned or not.]

1504. The action for supplement of price on the part of the seller, or for diminution of price, or for vacating the contract, on the part of the buyer, is subject to the general rules of prescription. — N. 1622. — C. 2210.

1505. If two immoveable properties be sold by the same contract, at a single price for the whole, with a declaration of the contents of each, and in one the quantity be less than stated and in the other greater, the deficiency of the one is compensated by the excess of the other so far as it goes, and the action of the buyer or seller is modified accordingly. — N. 1623.

SECTION III.

OF WARRANTY.

GENERAL PROVISIONS.

1506. The warranty to which the seller is obliged in favor of the buyer is either legal or conventional. It has two objects:

1. Eviction of the whole or any part of the thing;

2. The latent defects of the thing. — N. 1625.

1507. Legal warranty is implied by law in the contract of sale without stipulation. Nevertheless the parties may, by special agreement, add to the obligations of legal warranty, or diminish its effect, or exclude it altogether. — N. 1626, 1627.

§ 1. OF WARRANTY AGAINST EVICTION.

1508. The seller is obliged by law to warrant the buyer against eviction of the whole or any part of the thing sold, by reason of the act of the former, or of any right existing at the time of the sale, and against incumbrances not declared and not apparent at the time of the sale. — N. 1626.

1509. Although it be stipulated that the seller is not obliged to any warranty, he is nevertheless obliged to a

warranty against his personal acts. Any agreement to the contrary is null. — N. 1628.

1510. In like manner, when there is a stipulation excluding warranty, the seller in case of eviction is obliged to return the price of the thing sold, unless the buyer knew at the time of the sale the danger of eviction or had bought at his own risk. — N. 1629. — C. 1576.

1511. Whether the warranty be legal or conventional, the buyer, in case of eviction, has a right to claim from the seller:

1. Restitution of the price;

2. Restitution of the fruits in case he is obliged to pay them to the party who evicts him;

3. The expenses incurred, as well in his action of warranty against the seller as in the original action;

4. Damages, interest and all expenses of the contract;

Subject nevertheless to the provision contained in the article next following. — N. 1630. — C. 2236.

1512. If in the case of warranty the causes of eviction were known to the buyer at the time of the sale, and there be no special agreement, the buyer has a right to recover only the price of the thing sold.

1513. The seller is obliged to make restitution of the whole price of the thing sold, although, at the time of eviction, it be found to be diminished in value, or deteriorated, either by the neglect of the buyer, or by a fortuitous event; unless the buyer has derived a profit from the deterioration caused by him, in which case the seller may deduct from the price a sum equal to such profit. — N. 1631, 1632.

1514. If the thing sold be found, at the time of eviction, to have increased in value, either by or without the act of the buyer, the seller is obliged to pay him such increased value over the price at which the sale was made. — N. 1633.

1515. The seller is obliged to indemnify the buyer, or to cause him to be indemnified, for all repairs and useful expenditures made by him upon the property sold, according to their value. — N. 1634.

1516. If the seller have sold the property of another, in bad faith, he is obliged to reimburse the buyer for all expenditures laid out by him upon it. — N. 1635.

1517. If the buyer suffer eviction of a part only of the thing, or of two or more things sold as a whole, which part is nevertheless of such importance in relation to the whole that he would not have bought without it, he may vacate the sale. — N. 1636.

1518. If in the case of eviction of a part of the thing,

or things sold as a whole, the sale be not vacated, the buyer has a right to claim from the seller the value of such part, to be estimated proportionally upon the whole price, and also damages to be estimated according to the increased value of the thing at the time of eviction. — N. 1637.

1519. [If the property sold be charged with a servitude not apparent and not declared, of such importance that it may be presumed the buyer would not have bought, if he had been informed of it, he may vacate the sale or claim indemnity, at his option, and in either case may bring his action so soon as he is informed of the existence of the servitude.] — N. 1638.

1520. Warranty against eviction ceases in case the buyer fails to call in the seller within the delay prescribed in the Code of Civil Procedure, if the latter prove that there existed sufficient ground of defence to the action of eviction. — N. 1640. — P. 177 § 4, 183 et s.

1521. The buyer may enforce the obligation of warranty when, without the intervention of the judgment, he abandons the thing sold or admits the incumbrance upon it, if he prove that such abandonment or admission is made by reason of a right which existed at time of sale.

§ 2. OF WARRANTY AGAINST LATENT DEFECTS.

1522. The seller is obliged by law to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended, or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known them. — N. 1641.

1523. The seller is not bound for defects which are apparent and which the buyer might have known of himself. — N. 1642.

1524. The seller is bound for latent defects even when they were not known to him, unless it is stipulated that he shall not be obliged to any warranty. — N. 1643.

1525. When several principal things are sold together as a whole, so that the buyer would not have bought one of them without the other, the latent defect in one entitles him to vacate the sale for the whole.

1526. The buyer has the option of returning the thing and recovering the price of it, or of keeping the thing and recovering a part of the price according to an estimation of its value. — N. 1644.

1527. If the seller knew the defect of the thing, he is obliged not only to restore the price of it, but to pay

all damages suffered by the buyer.

He is obliged in like manner in all cases in which he is legally presumed to know the defects. — N. 1645.

1528. If the seller did not know the defects, or is not legally presumed to have known them, he is obliged only to restore the price and to reimburse to the buyer the expenses caused by the sale. — N. 1646.

1529. If the thing perish by reason of any latent defect which it had at the time of the sale, the loss falls upon the seller, who is obliged to restore the price of it to the buyer, and otherwise to indemnify him, as provided in the two last preceding articles.

If it perish by the fault of the buyer or by a fortuitous event, the value of the thing in the condition in which it was, at the time of the loss, must be deducted from his claim against the seller. — N. 1647.

1530. The redhibitory action, resulting from the obligation of warranty against latent defects, must be brought with reasonable diligence, according to the nature of the defect and the usage of the place where the sale is made. — N. 1648.

1531. In sales made under process of execution there is no obligation of warranty against latent defects. — N. 1649.

CHAPTER FIFTH.

OF THE OBLIGATIONS OF THE BUYER.

1532. The principal obligation of the buyer is to pay the price of the thing sold. — N. 1650.

1533. If the time and place of payment be not fixed by agreement, the buyer must pay at the time and place of the delivery of the thing. — N. 1651.

1534. The buyer is obliged to pay interest on the price in the cases following:

1. In case of a special agreement, from the time fixed by such agreement;

2. In case the thing sold be of a nature to produce fruits or other revenues, from the time of entering into possession of it. But if a term be stipulated for the payment of the price, the interest is due only from the expiration of such term;

3. In case the thing be not of a nature to produce fruits or revenues, from the time of the buyer being put in default. — N. 1652.

1535. If the buyer be disturbed in his possession or have just cause to fear that he will be disturbed by any action, hypothecary or in revendication, he may delay the payment of the price until the seller causes such disturbance to cease or gives security, unless there is a stipulation to the contrary.— N. 1653.

1536. [The seller of an immoveable cannot demand the dissolution of the sale by reason of the failure of the buyer to pay the price, unless there is a special stipulation to that effect.]

1537. [The stipulation and right of dissolution of the sale of an immoveable, by reason of non-payment of the price, are subject to the rules relating to the right of redemption contained in articles 1547. 1548, 1549, 1550, 1551, 1552.

The right can in no case be exercised after the expiration of ten years from the time of sale.] — C. 816, 2100, 2102, 2248.

1538. [The judgment of dissolution by reason of non-payment of the price is pronounced at once, without any delay being granted by it for the payment of the price; nevertheless the buyer may pay the price with interest and costs of suit at any time before the rendering of the judgment.] — N. 1655, 1656.

1539. The seller cannot have possession of the thing sold, upon the dissolution of the sale by reason of non-payment of the price, until he has repaid to the buyer such part of the price as he has received, with the costs of all necessary repairs, and of such improvements as have increased the value of the thing, to the amount of such increased value. If these improvements be of a nature to be removed, he has the option of permitting the buyer to remove them.

1540. The buyer is obliged to restore the thing with the fruits and profits received by him, or such portion thereof as corresponds with the part of the price remaining unpaid.

He is also answerable to the seller for the deteriorations of the property which have been caused by his fault.

1541. The seller is held to have abandoned his right to recover the price when he has brought an action for the dissolution of the sale by reason of the non-payment of it.

1542. [A demand of the price by action or other legal proceeding does not deprive the seller of his right to obtain the dissolution of the sale by reason of non-payment.]

1543. In the sale of moveable things the right of dissolution by reason of non-payment of the price can only be exercised while the thing sold remains in the possession of the buyer, without prejudice to the seller's right of revendication as provided in the title *Of Privileges and Hypothecs.*

In the case of insolvency such right can only be exercised during the thirty days next after the delivery. (R. S. Q., 5811.—54 V., c. 39,

s. 1.) — N. 1654. — C. 1998, 1999, 2000.

1544. In the sale of moveable things the buyer is obliged to take them away at the time and place at which they are deliverable.

[If the price have not been paid the dissolution of the sale takes place, in favor of the seller, of right and without the intervention of a suit, after the expiration of the day agreed upon for taking them away, or if there be no such agreement, after the buyer has been put in default in the manner provided in the title of *Of Obligations;*] without prejudice to the seller's claim for damages. — N. 1657. — C. 1165.

CHAPTER SIXTH.

OF THE DISSOLUTION AND OF THE ANNULLING OF THE CONTRACT OF SALE.

1545. Besides the causes of dissolution and of nullity already declared in this title, and those which are common to contracts, the contract of sale may be dissolved by the exercise of the right of the redemption. — N. 1658.

SECTION I.

OF THE RIGHT OF REDEMPTION.

1546. The right of redemption stipulated by the seller entitles him to take back the thing sold upon restoring the price of it, and reimbursing to the buyer the expenses of the sale and the costs of all necessary repairs, and of such improvements as have increased the value of the thing, to the amount of such increased value.

The seller cannot have possession of the thing until he has satisfied all these obligations. — N. 1659, 1673. — C. 2001 § 9, 2101, 2102.

1547. When the seller takes back the property under his right of redemption, he receives it free from all incumbrances with which the buyer may have charged it. — N. 1673. — C. 1665.

1548. [The right of redemption cannot be stipulated for a term exceeding ten years.

If it be stipulated for a longer term, it is reduced to the term of ten years.] — N. 1660. — C. 2248.

1549. [The stipulated term is to be strictly observed. It cannot be extended by the court.] — N. 1661.

1550. [If the seller fail to bring a suit for the enforcement of his right of redemption within the stipulated term, the buyer remains absolute owner of the thing sold.] — N. 1662.

1551. [The term runs against all persons, including minors and those otherwise incapable in law, reserving to the latter such re-

course as they may be entitled to.] — N. 1663.

1552. The seller of immoveable property may exercise his right of redemption against a second buyer, although the right be not declared in the second sale. — N. 1664.

1553. The buyer of a thing subject to a right of redemption holds all the rights which the seller had in the thing. He may prescribe as well against the true proprietor as against those having claims and hypothecs on the thing. — N. 1665.

1554. He may set up the benefit of discussion against the creditors of the seller.— N. 1666. — C. 2066, 2067. — P. 177 § 5, 190.

1555. If the buyer of an undivided part of an immoveable subject to the right of redemption become afterwards the buyer of the whole property, upon a sale by licitation instituted against him, and such right be not purged, he may oblige the seller who wishes to exercise it to take back the whole property. — N. 1667.

1556. If several persons sell conjointly, and by one contract, an immoveable which is their common property, with a right of redemption, each of them can exercise his right for the part only which belonged to him. — N. 1668.

1557. The rule declared in the last preceding article applies also if one seller of an immoveable have left several heirs; each of the coheirs can exercise the right of redemption for the part only which he has in the succession of the seller. — N. 1669.

1558. In the case stated in the two last preceding articles the buyer may, if he think fit, compel the co-vendor or the coheir to take back the whole of the property sold with the right of redemption, and in default of his so doing, he may cause the suit of such co-vendor or coheir for a part of the property to be dismissed. — N. 1670.

1559. If the sale of an immoveable belonging to several owners be made not conjointly of the whole property together, but by each of them of his part only, they may exercise their right of redemption separately, each for the portion which belonged to him, and the buyer cannot oblige him to take back the whole. — N. 1671.

1560. If an immoveable have been sold to several buyers, or to one buyer who leaves several heirs, the right of redemption can be exercised against each of the buyers or coheirs for his part only; but if there have been a partition of the property among the coheirs the right may be exercised for the whole property against any one of them to whom it has fallen. — N. 1672.

SECTION II.

OF THE ANNULLING OF SALE FOR CAUSE OF LESION.

1561. The rules relating to the avoiding of contracts for cause of lesion are declared in the title *Of Obligations*.— N. 1674. — C. 1001 et s.

SECTION II (A).

OF RE-ENTRY UPON ABANDONED LANDS.

1561*a*.

Repealed by 60 *V., c.* 50, *s.* 26.

1561*b*. — *Ibid.*

CHAPTER SEVENTH.

OF SALE BY LICITATION.

1562. If a thing, either moveable or immoveable, held in common by several proprietors cannot be partitioned conveniently and without loss, or if in a voluntary partition of a property held in common there be a part which none of the co-proprietors is able or willing to take, a public sale of it is made to the highest bidder, and the price is divided among them.

Strangers are admitted to bid at such sale. — N. 1686. —C. 439, 698, 709.—P. 1045.

1563. The manner and formalities of proceeding in sales by licitation are declared in the Code of Civil Procedure. — N. 1688. — P. 1045 et s.

CHAPTER EIGHTH.

OF SALE BY AUCTION.

1564. Sales by auction or public outcry are either forced or voluntary.

The rules relating to forced sales are declared in chapters seven and eleven of this title, and in the Code of Civil Procedure.

1565. The voluntary sale by auction of goods, wares, merchandise or effects cannot be made by any person other than a licensed auctioneer, subject to the following exceptions:

1. The sale of goods or effects belonging to the Crown or seized by a public officer under judgment or process of any court or as being forfeited;

2. The sale of goods of minors by forced or by voluntary licitation;

3. The sale of property, at any bazaar held for religious or charitable purposes, or the sale of property for religious purposes;

4. The sale of goods and effects belonging to deceased persons or to any dissolution of community, or to any church;

5. The sale of personal property, grain, or cattle for non-commercial purposes by the inhabitants of the rural districts, removing from the locality;

6. The sale at exhibitions of farm animals exhibited by agricultural societies;

7. Sales for municipal taxes under municipal laws. — R. S. Q., 5813.

"943. The following property and effects need not be sold by a licensed auctioneer, and sales thereof by auction, are exempt from the duty mentioned in Article 943*b*, to wit:

The moveable and immoveable property of the Crown, — those sold by authority of justice, — those sold through confiscation, — those of a deceased person, — those belonging to any dissolution of community, or to any church, or which are sold at any bazaar held for religious or charitable purposes, or which are sold in payment of municipal taxes under the Municipal Code, or any other law regulating municipalities;

Moveable and immoveable property, grain and cattle, sold for non-commercial purposes by the inhabitants of the rural districts removing from the locality, and the property of minors sold by forced or voluntary licitation ;

Farm animals exhibited by agricultural societies at an exhibition and sold during the time of such exhibition.

"943a. The following property and effects sold by auction and outcry in this Province, and adjudged to the highest and last bidder therefor must be sold by a licensed auctioneer, to wit:

All moveable and immoveable property, effects, goods, and stocks in trade, as well as the assets of a person who has made an assignment under the law respecting the abandonment of property;

The curator to the property of any person who has made an abandonment of his property under the law may, however, himself sell such property at auction, by taking out an auctioneer's license.

"943b. Sales by auction of immoveable property, and sales by auction of household furniture and effects in use, including therein pictures, paintings and books, under the preceding article, shall be subject to a duty of one per cent on the amount thereof, which duty shall be paid by the auctioneer to the Collector of Provincial Revenue out of the proceeds of the sale, at the cost of the seller, unless an express stipulation be made, in the conditions of sale, that such duty shall be paid by the buyer, in which case the duty shall be added to the price."—53 V., c. 16, s. 1, 2.

1566. A sale by auction contrary to the provisions contained in the last preceding article, is not null; it merely subjects the contravening parties to the penalties imposed by law.

1567. The adjudication of a thing to any person on his bid or offer, and the entry of his name in the sale-book of the auctioneer completes the

sale to him, and he becomes owner of the thing, subject to the conditions of sale announced by the auctioneer, notwithstanding the rule contained in article 1235. The contract from that time is governed by the rules applicable to the contract of sale.

1568. If the purchaser do not pay the price at which the thing was adjudged to him, in conformity with the conditions of sale, the seller may, after having given reasonable and customary notice thereof, again expose the thing to sale by auction, and if at the resale the price obtained for the thing be less than that for which it was adjudged to the first purchaser, the seller may recover from him the difference and all the expenses of the resale. But if at the resale a greater price be obtained for the thing, the first purchaser is not entitled to the benefit thereof, beyond the expenses of the resale, and he is not allowed to bid at such resale.

CHAPTER NINTH.

OF THE SALE OF REGISTERED VESSELS.

1569. Special provisions concerning the sale of registered ships or vessels are contained in the fourth book of this code in the title *Of Merchant Shipping*.—C. 2359 et s.

CHAPTER TENTH.

OF THE SALE OF DEBTS AND OTHER INCORPOREAL THINGS.

SECTION I.

OF THE SALE OF DEBTS AND RIGHTS OF ACTION.

1570. [The sale of debts and rights of action against third persons, is perfected between the seller and buyer by the completion of the title, if authentic, or the delivery of it, if under private signature.] (1) — N. 1689.

1571. The buyer has no possession available against third persons until signification of the act of sale has been made, and a copy of it delivered to the debtor. He may, however, be put in possession by the acceptance of the transfer by the debtor, subject to the special provisions contained in article 2127. — N. 1690. — C. 1174, 1192. — P. 692.

1571*a*. Whenever, in the case of a sale of a debt or a right of action, the debtor has left or has never had his domicile in this Province, the signification of the sale required by article 1571 may be effected, by publishing a notice of the said sale, twice

[1] *Vide* R. S. Q. 5610 et s. as to the sale and voluntary transfers of constituted rents replacing seigneurial rights.

in the French language, in a newspaper published in the French language, and twice in the English language, in a newspaper published in the English language, in the district in which the debt was contracted or in which the action may be instituted; and in default of such newspapers in such district, then in similar newspapers in the nearest locality.

The delivery of a copy of the deed of sale, required by the said article 1571, may be effected by leaving such copy for the debtor in the hands of the prothonotary of the district in which the debt was contracted or of the district in which the action may be brought. — R. S. Q., 5814. — 54 V., c. 40, s. 1.

1571*b*. Whenever in either of the cases mentioned in the preceding article, an action has been brought against the debtor, the service of the action, in the manner prescribed by article 68 [2] of the Code of Civil Procedure, is a sufficient signification of the deed of sale, if in the order published in virtue of the said article, the sale is mentioned and described; and the filing of a copy of the deed of sale together with the return of the action, is sufficient delivery thereof to the debtor. — R. S. Q., 5814.

1571*c*. Whenever a whole class of rents or debts collectively are sold, the signification of the sale required by article 1571 may be effected by causing the deed of sale to be published in the manner prescribed by article 1571*a*, and the delivery of the copy may be effected by depositing a copy of the deed of sale in the office of the prothonotary of the district in which the succession opened, or in which are situated the lands charged with such debts, or of the district in which is or was the chief place of business of the original creditor.

Such publication and deposit, shall be a sufficient signification and delivery with respect to each debtor individually. — *Id.*

SCHEDULE.

FORM OF NOTICE.

In connection with article 1571*a*.

To (*name and designation of the debtor*).

Notice is hereby given you that the debt (*or* right of action) which (*name of the selling creditor*) had against you by virtue of (*description of the title on which the debt or the right is founded*) has been sold and conveyed to (*name, designation and residence of the purchasing creditor*) by virtue of an instrument (*before notaries or by private writing*) executed at ....., the..... day of....., in the year ....., in the pres-

[2] Article 136 of the present Code of Civil Procedure.

ence of (*witness or the name of the notary*). — *Id.*

1572. If before the signification of the act by one of the parties to the debtor he have paid to the seller, he is discharged. — N. 1691.

1573. The two last preceding articles do not apply to bills, notes or bank checks payable to order or to bearer, no signification of the transfer of them being necessary; nor to debentures for the payment of money, nor to transfers of shares in the capital stock of incorporated companies, which are regulated by the respective acts of incorporation or the by-laws of such companies.

Notes for the delivery of grain or other things, or for the payment of money, and payable to order or to bearer, may be transferred by endorsement or delivery, without notice, whether they are payable absolutely or subject to a condition. — P. 666, 667.

1574. The sale of a debt or other right includes its accessories, such as securities, privileges and hypothecs. — N. 1692, 1615. — C. 1988, 2127.

1575. Arrears of interest accrued before the sale are not included in it as an accessory of the debt.

1576. The seller of a debt or other right is bound by law to the warranty that it exists and is due to him, although the sale be without warranty. Subject nevertheless to the exception declared in article 1510. — N. 1693.

1577. When the seller by a simple clause of warranty obliges himself for the solvency of the debtor, the warranty applies only to his solvency at the time of sale, and is limited in amount to the price paid by the buyer. — N. 1694, 1695. — C. 750.

1578. The preceding articles of this chapter apply equally to transfers of debts and rights of action against third persons by contracts other than sales, except gifts to which article 1576 does not apply. — C. 796.

SECTION II.

OF THE SALE OF SUCCESSIONS.

1579. [He who sells a right of succession without specifying in detail the property of which it consists is bound by law to warrant only his right as heir.] — N. 1696.— C. 647, 658, 710, 1061.

1580. If the seller have received the fruits or revenues of any property, or the amount of any debt, or sold anything making part of the succession, he is bound to reimburse the same to the buyer, unless they have been expressly reserved. — N. 1697.

1581. The buyer, besides his obligations common to the contract of sale, is oblig-

ed to reimburse the seller for all debts and expenses of the succession paid by him, to pay him the debts which the succession may owe him, and to discharge all debts and obligations of the succession for which he is liable; unless there is a stipulation to the contrary. — N. 1698.

SECTION III.

OF THE SALE OF LITIGIOUS RIGHTS.

1582. When a litigious right is sold, he against whom it is claimed is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer has paid it. — N. 1699. — C. 1485.

1583. A right is held to be litigious when it is uncertain, and disputed or disputable by the debtor, whether an action for its recovery is actually pending or is likely to become necessary. — N. 1700.

1584. The provisions contained in article 1582 do not apply:

1. When the sale has been made to a coheir or coproprietor of the right sold;

2. When it has been made to a creditor in payment of what is due to him;

3. When it has been made to the possessor of a property subject to the litigious right;

4. When the judgment of a court has been rendered affirming the right, or when it has been made clear by evidence and is ready for judgment. — N. 1701.

CHAPTER ELEVENTH.

OF FORCED SALES AND TRANSFERS RESEMBLING SALE.

SECTION I.

OF FORCED SALES.

1585. The creditor who has a judgment against his debtor may take in execution and cause to be sold, in satisfaction of such judgment, the property moveable or immoveable of his debtor, except only the articles specially exempted by law; subject to the rules and formalities provided in the Code of Civil Procedure. — N. 2204, 2213. — C. 1490, 1531, 2268 § 4. — P. 598, 599.

1586. In judicial sales under execution, the buyer, in case of eviction, may recover from the debtor the price paid with interest and the incidental expenses of the title; he may also recover, from the creditors who have received it, the price with interest; saving to the latter their exception of discussion of the property of the debtor. — P. 668, 784, 785, 831.

1587. The last preceding article is without prejudice to

the recourse which the buyer has against the prosecuting creditor, by reason of informalities in the proceedings, or of the seizure of property not ostensibly belonging to the debtor.

1588. The general rules concerning the effect of forced judicial sales in the extinction of hypothecs and of other rights and incumbrances, are declared in the title *Of Privileges and Hypothecs*, and in the Code of Civil Procedure.—C. 950, 953 § 2, 1447, 2081 § 6. — P. 781.

1589. In cases in which immoveable property is required for purposes of public utility, the owner may be forced to sell it or be expropriated by the authority of law in the manner and according to the rules prescribed by special laws. [1] — C. 407.

1590. In the case of sales and expropriations for purposes of public utility, the party acquiring the property cannot be evicted. The hypothecs and other charges are extinguished, saving to the creditors their recourse upon the price and subject to the special laws relating to the matter. [1]—C. 953 § 1, 2081 § 6.

1591. The rules concerning the formalities and proceedings in judicial and other forced sales and expropriations are contained in the Code of Civil Procedure and in the acts relating to municipal and other incorporated bodies; such sales and expropriations are subject to the rules generally applicable to the contract of sale, when these are not inconsistent with special laws or any article of this code. [1]

SECTION II.

OF THE GIVING IN PAYMENT.

1592. The giving of a thing in payment is equivalent to a sale of it, and makes the party giving liable to the same warranty.

The giving in payment, nevertheless, is perfected only by the actual delivery of the thing. It is subject to the provisions relating to the avoidance of contracts and payments contained in the title *Of Obligations*.

SECTION III.

OF ALIENATION FOR RENT.

1593. The alienation in perpetuity of immoveable property for an annual rent, is equivalent to a sale. It is subject to the same rules as the contract of sale in so far as they can be made to apply.

1594. The rent may be payable either in money or in kind. Its nature and the rules to which it is subject are declared in the articles

[1] *Vide* R. S. Q. 5754*a* et s. (54 V., c. 38) as to Expropriations.

relating to rents contained in the second chapter of the first title of the second book. — C. 389 et s., 1792, 1908, 2607.

1595. The obligation to pay the rent is a personal liability; the purchaser is not discharged from it by abandonment of the property, nor is he discharged by reason of the destruction of the property by a fortuitous event or by irresistible force.

TITLE SIXTH.

OF EXCHANGE.

1596. Exchange is a contract by which the parties respectively give to each other one thing for another. [It is effected by consent, in the same manner as sale.] — N. 1702, 1703. — C. 1472.

1597. If one of the parties, even after having received the thing given to him in exchange, prove that the other party was not owner of such thing, he cannot be compelled to deliver that which he has promised in counter-exchange, but only to return the thing which he has received. — N. 1704.

1598. The party who is evicted of the thing he has received in exchange has the option of demanding damages or of recovering the thing given by him. — N. 1705.

1599. The rules contained in the title *Of Sale* apply equally to exchange, when not inconsistent with any article of this title. — N. 1707.

TITLE SEVENTH.

OF LEASE AND HIRE.

CHAPTER FIRST.

GENERAL PROVISIONS.

1600. The contract of lease or hire has for its object either things or work, or both combined. — N. 1708.

1601. The lease or hire of things is a contract by which one of the parties, called the lessor, grants to the other, called the lessee, the enjoyment of a thing, during a certain time, for a rent or price which the latter obliges himself to pay. — N. 1709.

1602. The lease or hire of work is a contract by which one of the parties, called the lessor, obliges himself to do certain work for the other, called the lessee, for a price which the latter obliges himself to pay. — N. 1710.

1603. The letting out of cattle on shares is a contract of lease or hire combined with a contract of partnership. — N. 1804, 1818. — C. 1698 et s.

1604. The capacity to enter into a contract of lease or hire is governed by the general rules relating to the capacity to contract, contained in chapter one of the title *Of Obligations*.—C. 319, 985 et s.

CHAPTER SECOND.

OF THE LEASE OR HIRE OF THINGS.

SECTION I.

GENERAL PROVISIONS.

1605. All corporeal things may be leased or hired, except such as are excluded by their special destination, and those which are necessarily consumed by the use made of them. — N. 1713.

1606. Incorporeal things may also be leased or hired, except such as are inseparably attached to the person. If attached to a corporeal thing, as a right of servitude, they can only be leased with such thing. — N. 631, 634.— C. 494, 497.

1607. The lease or hire of houses and the lease or hire of farms and rural estates are subject to the rules common to contracts of lease or hire, and also to particular rules applicable only to the one or the other of them. — C. 1642 et s., 1646 et s.

1608. Persons holding real property by sufferance of the owner, without lease, are held to be lessees, and bound to pay the annual value of the property.

Such holding is regarded as an annual lease or hire terminating on the first day of May of each year, if the property be a house, and on the [first day of October, if it be a farm or rural estate.]

It is subject to tacit renewal and to all the rules of law applicable to leases.

Persons so holding are liable to ejectment for nonpayment of rent for a period exceeding three months, and for any other causes for which a lease may be rescinded. — C. 1233 § 3, 1624 § 2, 1642, 1653, 1657.

1609. If the lessee remain in possession more than eight days after the expiration of the lease, without any opposition or notice on the part of the lessor, a tacit renewal of the lease takes place for another year, or the term for which such lease was made, if less than a year, and the lessee cannot thereafter leave

the premises, or be ejected from them, unless notice has been given with the delay required by law. — N. 1738, 1759. — C. 1657, 1658.

1610. When notice has been given the lessee cannot claim the tacit renewal, although he has continued in possession. — N. 1739.

1611. The surety given for the lease does not extend to the obligations arising from the prolongation of it by tacit renewal. — N. 1740. — C. 1935.

SECTION II.

OF THE OBLIGATIONS AND RIGHTS OF THE LESSOR.

1612. The lessor is obliged by the nature of the contract:

1. To deliver to the lessee the thing leased;

2. To maintain the thing in a fit condition for the use for which it has been leased;

3. To give peaceable enjoyment of the thing during the continuance of the lease. — N. 1719.

1613. The thing must be delivered in a good state of repair in all respects, and the lessor is obliged, during the lease, to make all necessary repairs, except those which the tenant is bound to make, as hereinafter declared. — N. 1720.

1614. The lessor is obliged to warrant the lessee against all defects and faults in the thing leased, which prevent or diminish its use, whether known to the lessor or not. — N. 1721.

1615. The lessor cannot, during the lease, change the form of the thing leased. — N. 1723.

1616. The lessor is not obliged to warrant the lessee against disturbance by the mere trespass of a third party not pretending to have any right upon the thing leased; saving to the lessee his right of damages against the trespasser, and subject to the exceptions declared in the following article. — N. 1725.

1617. If the lessee's right of action for damages against the trespasser be ineffectual, by reason of the insolvency of the latter, or of his being unknown, his rights against the lessor are regulated according to article 1660.

1618. If the disturbance be in consequence of a claim concerning the right of property, or other right in and upon the thing leased, the lessor is obliged to suffer a reduction in the rent, proportional to the diminution in the enjoyment of the thing, and to pay damages according to circumstances, provided the lessor be duly notified of the disturbance by the lessee; and upon any action brought by reason of such claim, the lessee is entitled to be dismissed from the cause, upon declaring to the plaintiff the name of the

lessor. — N. 1726, 1727. — C. 1649.

1619. The lessor has, for the payment of his rent and other obligations of the lease, a privileged right upon the moveable effects which are found upon the property leased. — N. 2102. — C. 1994 § 8, 2005. — P. 646.

1620. In the lease of houses the privileged right includes the furniture and moveable effects of the lessee, and, if the lease be of a store, shop or manufactory, the merchandise contained in it. In the lease of farms and rural estates the privileged right includes everything which serves for the labor of the farm, the furniture and moveable effects in the house and dependencies, and the fruits produced during the lease. — N. 2102.

1621. The right includes also the effects of the undertenant, in so far as he is indebted to the lessee. — N. 1753. — C. 1639.

1622. It includes also moveable effects belonging to third persons, and being on the premises by their consent, expressed or implied, for sums which have become due by the lessee prior to the notification given to the lessor of the property rights of third persons or before the knowledge acquired by the lessor of such rights of third persons, but not if such effects be only transiently or accidentally on the premises, as the baggage of a traveller in an inn, or articles sent to a workman to be repaired or to an auctioneer to be sold.

The notification in due time to the lessor shall avail against a subsequent acquirer of the leased premises. — 61 V., c. 45.

1623. In the exercise of the privileged right the lessor may seize the things which are subject to it, upon the premises, or within eight days after they are taken away. If the things consist of merchandise, they can be seized only while they continue to be the property of the lessee. — N. 2102. — C. 953.

1624. The lessor has a right of action in the ordinary course of law, or by summary proceeding, as prescribed in the Code of Civil Procedure:

1. To rescind the lease: First, When the lesssee fails to furnish the premises leased, if a house, with sufficient furniture or moveable effects, and, if a farm, with sufficient stock to secure the rent as required by law, — unless other security be given; Secondly, When the lessee commits waste upon the premises leased; Thirdly, When the lessee use the premises leased for illegal purposes, or contrary to the evident intent for which they are leased;

2. To recover possession of

the premises leased in all cases where there is a cause for rescission, and where the lessee continues in possession, against the will of the lessor, more than three days after the expiration of the lease, or without paying the rent according to stipulations of the lease, if there be one, or according to article 1608, when there is no lease;

3. To recover damages for violation of the obligations arising from the lease or from the relation of lessor and lessee.

He has also a right to join with any action for the purposes above specified, a demand for rent, with or without attachment, and attachment in recaption when necessary. — N. 1729, 1752, 1766. — C. 1637, 1646. — P. 952 et s., 1152 et s.

1625. The judgment rescinding the lease by reason of the non-payment of the rent is pronounced at once without any delay being granted by it for the payment; nevertheless the lessee may pay the rent with interest and costs of suit and thereby avoid the rescission at any time before the rendering of the judgment.

SECTION III.

OF THE OBLIGATIONS AND RIGHTS OF THE LESSEE.

1626. The principal obligations of the lessee are:

1. To use the thing leased as a prudent administrator, for the purposes only for which it is designed and according to the terms and intention of the lease;

2. To pay the rent or hire of the thing leased.—N. 1728.

1627. The lessee is responsible for injuries and loss which happen to the thing leased during his enjoyment of it, unless he proves that he is without fault. — N. 1732.

1628. He is answerable also for the injuries and losses which happen from the acts of persons of his family or of his subtenants. — N. 1735.

1629. When loss by fire occurs in the premises leased, there is a legal presumption in favor of the lessor, that it was caused by the fault of the lessee or of the persons for whom he is responsible; and unless he proves the contrary he is answerable to the lessor for such loss. — N. 1733.

1630. The presumption against the lessee declared in the last preceding article exists in favor of the lessor only, and not in favor of the proprietor of a neighboring property who suffers loss by fire which has originated in the premises occupied by such lessee.

1631. If there be two or more lessees of separate parts of the same property, each is answerable for loss by fire, according to the proportion of his rent to the rent of the whole property; unless it is proved that the fire began in the habitation of one of

them, in which case he alone is answerable for it; or some of them prove that the fire could not have begun with them, in which case they are not answerable. — N. 1734.

1632. If a statement have been made between the lessor and lessee, of the condition of the premises, the latter is obliged to restore them in the condition in which the statement shews them to have been; with the exception of the changes caused by age or irresistible force. — N. 1730.

1633. If no such statement as is mentioned in the preceding article have been made, the lessee is presumed to have received the premises in good condition, and is obliged to restore them in the same condition; saving his right to prove the contrary. — N. 1731.

1634. If during the lease the thing leased be in urgent want of repairs, which cannot be deferred, the lessee is obliged to suffer them to be made, whatever inconvenience they may cause him, and although he may be deprived, during the making of them, of the enjoyment of a part of the thing;

If such repairs became necessary before the making of the lease he is entitled to a diminution of the rent according to the time and circumstances; and in any case, if more than forty days be spent in making such repairs, the rent must be diminished in proportion to the time and the part of the thing leased of which he has been deprived.

If the repairs be of a nature to render the premises uninhabitable for the lessee and his family, he may cause the lease to be rescinded. — N. 1724.

1635. The tenant is obliged to make certain lesser repairs which become necessary in the house or its dependencies, during his occupancy. These repairs, if not specified in the lease, are regulated by the usage of the place. The following, among others, are deemed to be tenant's repairs, namely, repairs:

To hearths, chimney-backs, chimney-casings and grates;

To the plastering of interior walls and ceilings;

To floors, when partially broken, but not when in a state of decay;

To window-glass, unless it is broken by hail or other inevitable accident, for which the tenant cannot be holden;

To doors, windows, shutters, blinds, partitions, hinges, locks, hasps and other fastenings. — N. 1754.

1636. The tenant is not obliged to make the repairs deemed tenant's repairs when they are rendered necessary by age or by irresistible force. — N. 1755.

1637. In case of ejectment or rescission of the lease for the fault of the lessee, he is

obliged to pay the rent up to the time of vacating the premises and also damages, as well for loss of rent afterwards, during the time necessary for reletting, as for any other loss resulting from the wrongful act of the lessee. — N. 1760.

1638. The lessee has a right to sublet, or to assign his lease, unless there is a stipulation to the contrary.

If there be such a stipulation, it may apply to the whole or a part only of the premises leased, and in either case it is to be strictly observed. — R. S. Q., 6236. — 49 V., C., c. 4, s. 5, schedule A. — N. 1717. — C. 1646.

1639. The undertenant is held towards the principal lessor for the amount only of the rent which he may owe at the time of seizure;

He cannot set up payments made in advance;

Payments made by the undertenant, either in virtue of a stipulation in the lease, or in accordance with the usage of the place, are not deemed to be made in advance. — N. 1753. — C. 1621.

1640. The lessee has a right to remove, before the expiration of the lease, the improvements and additions which he has made to the thing leased, provided he leaves it in the state in which he has received it; nevertheless if the improvements or additions be incorporated with the thing leased, with nails, lime, or cement, the lessor may retain them on paying the value.

1641. The lessee has a right of action in the ordinary course of law, or by summary proceeding as provided in the Code of Civil Procedure:

1. To compel the lessor to make the repairs and ameliorations stipulated in the lease, or to which he is obliged by law; or to obtain authority to make the same at the expense of such lessor; or, if the lessee so declare his option, to obtain the rescission of the lease in default of such repairs or ameliorations being made;

2. To rescind the lease for failure on the part of the lessor to perform any other of the obligations arising from the lease or devolving upon him by law;

3. To recover damages for violation of the obligations arising from the lease, or from the relation of lessor and lessee. — P. 1152 et s.

SECTION IV.

RULES PARTICULAR TO THE LEASE OR HIRE OF HOUSES.

1642. The lease or hire of a house or part of a house, when no time is specified for its duration, is held to be annual, terminating on the first day of May of each year, when the rent is at so much a year;

For a month, when it is at so much a month;

For a day, when it is at so much a day.

If the rate of the rent for a certain time be not shewn, the duration of the lease is regulated by the usage of the place. — N. 1758. — C. 1608, 1657, 1658.

1643. The lease of moveables for furnishing a house or apartments, when no time is indicated for its duration, is governed by the rules contained in the last preceding article, and when these do not apply, is deemed to be made for the usual duration of leases of houses or apartments, according to the usage of the place. — N. 1757.

1644. The cleansing of wells and of the vaults of privies is at the charge of the lessor, if there be no stipulation to the contrary. — N. 1756.

1645. The rules contained in this chapter, relating to houses, extend also to warehouses, shops and manufactories, and to all immoveable property other than farms and rural estates, in so far as they can be made to apply.

SECTION V.

RULES PARTICULAR TO THE LEASE AND HIRE OF FARMS AND RURAL ESTATES.

1646. He who cultivates land on condition of sharing the produce with the lessor can neither sublet nor assign his lease, unless the right to do so has been expressly stipulated.

If he sublet or assign, without such stipulation, the lessor may eject him, and recover damages resulting from the violation of the lease. — N. 1763, 1764.

1647. The lessee is obliged to furnish the farm with sufficient stock and the implements necessary for its cultivation, and to cultivate it with reasonable care and skill. — N. 1766.

1648. If the farm be found to contain a greater or less quantity than that specified in the lease, the rights of the parties to an increase or diminution of the rent are governed by the rules on that subject contained in the title *Of Sale*. — N. 1765. — C. 1500 et s.

1649. The lessee of a farm or rural estate is bound to give notice to the lessor, with reasonable diligence, of any encroachment made upon it; in default of so doing he is liable for all damages and expenses. — N. 1768. — C. 1618.

1650. If the lease be for one year only, and, during the year, the harvest be wholly or in great part lost by a fortuitous event or by irresistible force, the lessee is discharged from his obligation for the rent in proportion to such loss. — N. 1770.

1651. [If the lease be for

a term of two or more years, the lessee is not entitled to claim any reduction of rent in the case stated in the last preceding article.] — N. 1769.

1652. When the loss happens after the harvest is separated from the land, the lessee is not entitled to any reduction of the rent payable in money. If the rent consist of a share in the harvest, the lessor must bear his proportion of the loss, unless the loss is caused by the fault of the lessee, or he be in default of delivering such share. — N. 1771.

1653. The lease of a farm or rural estate, when no term is specified, is presumed to be an annual lease, terminating on the first day of October of each year, subject to notice as hereinafter provided. — N. 1774. — C. 1608, 1657.

1654. The lessee of a farm or rural estate must leave, at the termination of his lease, the manure, and the straw and other substances intended for manure, if he have received them on taking possession; if he have not so received them, the owner may nevertheless retain them on paying their value. — N. 1778.

SECTION VI.

OF THE TERMINATION OF THE LEASE OR HIRE OF THINGS.

1655. The contract of lease or hire of things is terminated in the manner common to obligations, as declared in the eighth chapter of the title *Of Obligations*, in so far as the rules therein contained can be applied, and subject to the special rules contained in this title.

1656. It is also terminated by rescission in the manner and for the causes declared in articles 1624 and 1641 (R. S. Q., 6237; 49 V. C., c. 4, s. 5, schedule A.).

1657. When the term of a lease is uncertain, or the lease is verbal, or presumed as provided in article 1608, neither of the parties can terminate it without giving notice to the other, with a delay of three months, if the rent be payable at terms of three or more months; if the rent be payable at terms of less than three months, the delay is to be regulated according to article 1642.

The whole nevertheless subject to that article and to articles 1608 and 1653. — N. 1736.

1658. The lease, if written, terminates of course, and without notice, at the expiration of the term agreed upon. — N. 1737.

1659. The contract of lease or hire of things is terminated by the loss of the thing leased. — N. 1741.

1660. If, during the lease, the thing be wholly destroyed by irresistible force, or a fortuitous event, or taken for purposes of public utility, the lease is dissolved of course. If the thing be de-

stroyed or taken in part only, the lessee may, according to circumstances, obtain a reduction of the rent or the dissolution of the lease; but in either case he has no claim for damages against the lessor. — N. 1722. — C. 1617.

1661. The contract of lease or hire of things is not dissolved by the death of the lessor or lessee. — N. 1742.

1662. The lessor cannot put an end to the lease, for the purpose of occupying himself the premises leased, unless the right to do so has been expressly stipulated, [and in such case the lessor must give notice to the lessee according to the rules contained in article 1657 and the articles therein referred to; unless it is otherwise stipulated.] — N. 1761.

1663. [The lessee cannot, by reason of the alienation of the thing leased, be expelled before the expiration of the lease, by a person who becomes owner of the thing leased under a title derived from the lessor; unless the lease contains a special stipulation to that effect and be registered.

In such case notice must be given to the lessee according to the rules contained in article 1657 and the articles therein referred to; unless it is otherwise specially agreed.] — N. 1743. — C. 2128, 2129.

1664. [The lessee who is expelled under a stipulation to that effect is not entitled to recover damages, unless the right to do so is expressly reserved in the lease.] — N. 1744.

1665. When property sold subject to the right of redemption is taken back by the seller, in the exercise of such right, the lease made by the buyer is thereby terminated and the lessee has his recourse for damages upon the buyer only. — N. 1673.

CHAPTER THIRD.

OF THE LEASE AND HIRE OF WORK.

SECTION I.

GENERAL PROVISIONS.

1666. The principal kinds of work which may be leased or hired are:

1. The personal services of workmen, servants and others;

2. The work of carriers, by land and by water, who undertake the conveyance of persons or things;

3. That of builders and others, who undertake works by estimate or contract.[1] — N. 1779.

[1] R. S. Q. 5614 et s. contain special provisions as to masters and servants, *voyageurs* and fishermen.—57 V., c. 40

SECTION II.

OF THE LEASE AND HIRE OF THE PERSONAL SERVICE OF WORKMEN, SERVANTS (AND OTHERS.)

1667. The contract of lease or hire of personal service can only be for a limited term, or for a determinate undertaking.

It may be prolonged by tacit renewal. — N. 1780.

1668. It is terminated by the death of the party hired or his becoming, without fault, unable to perform the services agreed upon.

It is also terminated by the death of the party hiring, in some cases, according to circumstances. — N. 1795.

1669. In any action for wages by domestics or farm servants, the master may, in the absence of written proof, offer his oath as to the conditions of the engagement and as to the fact of the payment, accompanied by a detailed statement; but such oath may be refuted in the same manner as any other testimony. — R. S. Q., 5815. — N. 1781.

1670. The rights and obligations arising from the lease or hire of personal service are subject to the rules common to contracts. They are also regulated in certain respects in the country parts by a special law, and in the towns and villages by by-laws of the respective municipal councils.—C. 1994 § 9, 2006, 2009 § 9, 2260 § 6, 2261 § 3, 2262 § 3. — M. C. 624.

1671. The hiring of seamen is subject to certain special rules provided in the Imperial laws respecting Merchant Shipping and the Federal acts respecting the hiring of seamen, and the hiring of boatmen, commonly called *voyageurs* by the provincial act respecting *voyageurs*. — R. S. Q., 6238. — R. S. C., c. 74 and 75.

SECTION III.

OF CARRIERS.

1672. Carriers by land and by water are subject, with respect to the safe-keeping of things entrusted to them, to the same obligations and duties as innkeepers, declared under the title *Of Deposit*. — N. 1782. — C. 1813 et s.

1673. They are obliged to receive and convey, at the times fixed by public notice, all persons applying for passage, if the conveyance of passengers be a part of their accustomed business, and all goods offered for transportation; unless, in either case, there is a reasonable and sufficient cause of refusal.

1674. They are liable, not only for what has been received in the carriage or vessel, but also for what has been delivered to them at the port or place of deposit, to be put in their carriage or vessel. — N. 1783.

1675. They are liable for the loss or damage of things entrusted to them, unless they can prove that such loss or damage was caused by a fortuitous event or irresistible force, or has arisen from a defect in the thing itself. — N. 1784.

1676. Notice by carriers, of special conditions limiting their liability, is binding only upon persons to whom it is made known; and notwithstanding such notice and the knowledge thereof, carriers are liable whenever it is proved that the damage is caused by their fault or the fault of those for whom they are responsible.

1677. They are not liable for large sums of money or of bills or other securities, or for gold, or silver, or precious stones, or other articles of an extraordinary value, contained in any package received for transportation, unless it is declared that the package contains such money or other articles.

The foregoing rule nevertheless does not apply to the personal baggage of travellers when the money or the value of the articles lost is only of a moderate amount and suitable to the circumstances of the traveller, and the traveller is entitled to be examined upon oath in proof of the value of the things composing such baggage. — C. 1816. — P. 372.

1678. If by reason of a fortuitous event, or irresistible force, the transportation and delivery of the thing be not made within the stipulated term, the carrier is not liable in damages for the delay.

1679. The carrier has a right to retain the thing transported until he is paid for the carriage or freight of it. — N. 2102. — C. 2001 § 1.

1680. The reception of the thing transported and payment of the carriage or freight, without protest, extinguish all right of action against the carrier; unless the loss or damage is such that it could not then be known, in which case the claim must be made without delay after the loss or damage becomes known to the claimant.

1681. The conveyance of persons and things by railway is subject to certain special rules, provided in the Federal and Provincial acts respecting railways. — R. S. Q., 6239; R. S. C., c. 109. — N. 1786.

1682. Special rules relating to the contract of affreightment and the conveyance of passengers in merchant vessels, are contained in the fourth book. — N. 1786. — C. 2413, 2461.

1682*a*. Paragraphs 4, 5 and 6 of article 5172 of the Revised Statutes apply to all carriers not coming within

the provisions of articles 1681 and 1682.

1682*b*. The effects contained in packages, boxes or closed trunks shall be exhibited to the bidders before being adjudged. — 5 Ed. VII., c. 28.

SECTION IV.

OF WORK BY ESTIMATE AND CONTRACT.

1683. When a party undertakes the construction of a building or other work by estimate and contract, it may be agreed, either that he shall furnish labor and skill only, or that he shall also furnish materials. — N. 1787.

1684. If the workman furnish the materials, and the work is to be perfected and delivered as a whole, at a fixed price, the loss of the thing, in any manner whatsoever, before delivery, falls upon himself, unless the loss is caused by the fault of the owner or he is in default of receiving the thing. — N. 1788.

1685. If the workman furnish only labor and skill, the loss of the thing before delivery does not fall upon him, unless it is caused by his fault. — N. 1789.

1686. In the case of the last preceding article, if the work is to be perfected and delivered as a whole, and the thing perish before the work has been received, and without the owner being in default of receiving it, the workman cannot claim his wages, although he be without fault; unless the thing has perished by reason of defect in the materials, or by the fault of the owner.— N. 1790.

1687. If the work be composed of several parts, or done at a certain rate by measurement, it may be received in parts. It is presumed to have been so received, for all the parts paid for, if the owner pays the workman in proportion to the work done. — N. 1791.

1688. If a building perish in whole or in part within ten years, from a defect in construction, or even from the unfavorable nature of the ground, the architect superintending the work, and the builder are jointly and severally liable for the loss. — N. 1792, 2270. — C. 2259.

1689. If, in the case stated in the last preceding article, the architect do not superintend the work, he is liable for the loss only which is occasioned by defect or error in the plan furnished by him.

1690. [When an architect or builder undertakes the construction of a building or other works by contract, upon a plan and specifications, at a fixed price, he cannot claim any additional sum

upon the ground of a change from the plan and specifications, or of an increase in the labor and materials, unless such change or increase is authorized in writing and the price thereof is agreed upon with the proprietor, or unless the agreement upon those two points is established by the decisory oath of the proprietor. — R. S. Q. 5816. — N. 1793. — C. 1233 § 9.

1691. The owner may cancel the contract for the construction of a building or other works at a fixed price, although the work have been begun, on indemnifying the workman for all his actual expenses and labor, and paying damages according to the circumstances of the case. — N. 1794.

1692. The contract of lease or hire of work by estimate and contract is not terminated by the death of the workman; his legal representatives are bound to perform it.

But in cases wherein the skill and ability of the workman were an inducement for making the contract, it may be cancelled at his death by the party hiring him. — N. 1795.

1693. In the latter case stated in the last preceding article the owner is bound to pay to the legal representatives of the workman, in proportion to the price agreed upon in the contract, the value of the work done and materials furnished, in case such work and materials are useful to him. — N. 1796.

1694. The contract is not terminated by the death of the party hiring the work, unless the performance of it becomes thereby impossible. — N. 1742.

1695. Architects, builders and other workmen, have a privilege upon the buildings, or other works constructed by them, for the payment of their work and materials, subject to the rules contained in the title *Of Privileges and Hypothecs*, and the title *Of Registration of Real Rights*. — N. 2103. — C. 2009 § 7, 2013 et s., 2103.

1696. Masons, carpenters, and other workmen, who undertake work by contract, for a fixed price, are subject to the rules prescribed in this section. They are regarded as contractors with respect to such work. — N. 1799.

1697. The workmen who are employed by the contractor in the construction of a building or other works have no direct action against the owner. — N. 1798.

SECTION IV (A).

OF PAYMENT OF WORKMEN.

1697*a*. Every builder or contractor, whether chief or sub-contractor, who employs

workmen by the day or by piece work, to carry out a contract, must keep a list, showing the names and wages or price of the work of such workmen; and every payment to them made must be attested by the signature or cross of such workmen affixed thereto, in presence of a witness, who also signs it.— R. S. Q., 5817.

1697*b*. It shall be lawful for every workman who is unpaid to produce, in the presence of a witness, to the proprietor who gave the work out to contract, his claim in duplicate in the form of Schedule B; and, from the time such claim shall be so produced, the sum then due upon the price or value of the contract shall be deemed to be seized in the hands of the proprietor *pro rata* up to the amount of the claim of the workman.

[Five days after the production of such claim, if the claim of the workman have not been paid, the latter may proceed judicially against the contractor who employed him, making the proprietor a party to the suit.

Payments made by the proprietor after the production of the claim cannot be opposed to the workman's claim. — *Id.*

1697*c*. Several unpaid workman may join in the same claim. — *Id.*

1697*d*. In case of an assignment by the contractor to a third party of the price of the work, the claim of the workman has, with respect to such third party, the same effect as it would have had with respect to the contractor if no such assignment had been made. — *Id.*

SCHEDULE B.

(Form of claim in connection with article 1697*b*).

CLAIM OF WORKMAN TO BE DELIVERED TO THE PROPRIETOR.

To C. D. (*name of the proprietor*).

Sir. — In presence of the undersigned witness, I (*or* we), E. F., (*name of the workman or workmen*) declare that A. B. (*name of the contractor*) owes me (*or* us) a sum of $..... for..... (*number of days*), employed at your work, at (*place*) (*or* a sum of $....., *if by the piece or contract*), which sum the said A. B. (*name of the contractor*), your contractor, refuses or neglects to pay me (*or* us).

Made in duplicate at....., this..... day of....., 18...

(Signed), E. F.

Signature of workman or workmen.

(Signed), G. H.

Witness.

—*Id.*

SCHEDULE A

FORM OF PAY-LIST IN CONNECTION WITH ARTICLE 1697*a*.

PAY-LIST of the workmen employed by A. B. (*name of the contractor*) upon the works being executed for C. D. (*name of the proprietor.*)

Name of the workmen.	Number of days.	Salary per day.	Nature of contract.	Price of contract.	Total amount due.	Signature of workman upon payment.	Signature of witness to payment.

Id.

CHAPTER FOURTH.

OF THE LEASE OF CATTLE ON SHARES.

1698. The letting out of cattle on shares is a contract by which one of the parties delivers to the other a stock of cattle to keep, feed, and take care of, upon certain conditions as to the division of profits between them. — N. 1800. — C. 1603.

1699. Every kind of animal which is susceptible of increase or profit, in agriculture or commerce, may be the object of this contract.— N. 1802.

1700. If there be no special agreement the contract is regulated by the usage of the place where the cattle are kept.

TITLE EIGHTH.

OF MANDATE.

CHAPTER FIRST.

GENERAL PROVISIONS.

1701. Mandate is a contract by which a person, called the mandator, commits a lawful business to the management of another, called the mandatory, who by his acceptance obliges himself to perform it.

The acceptance may be implied from the acts of the mandatory, and in some cases from his silence. — N. 1984, 1985.

1702. Mandate is gratuitous unless there is an agreement or an established usage to the contrary. — N. 1986.

1703. The mandate may be either special, for a particular business, or general, for all the affairs of the mandator.

When general it includes only acts of administration.

For the purpose of alienation and hypothecation, and for all acts of ownership other than acts of administration, the mandate must be express. — N. 1987, 1988.

1704. The mandatory can do nothing beyond the authority given or implied by the mandate. He may do all acts which are incidental to such authority and necessary for the execution of the mandate. — N. 1989.

1705. Powers granted to persons of a certain profession or calling to do anything in the ordinary course of the business which they follow, need not be specified;

they are inferred from the nature of such profession or calling.

1706. An agent employed to buy or sell a thing cannot be the buyer or seller of it on his own account. — N. 1596. — C. 1484.

1707. Emancipated minors may be mandataries, but in such cases the action of the mandator against the minor is subject to the general rules relating to the obligations of minors. — N. 1990.

1708. A married woman, who executes a mandate given to her, binds the mandator, but no action can be brought against her otherwise than as provided in the title *Of Marriage*. — N. 1990.

CHAPTER SECOND.

OF THE OBLIGATIONS OF THE MANDATARY.

SECTION I.

OF THE OBLIGATIONS OF THE MANDATARY TOWARD THE MANDATOR.

1709. The mandatary is obliged to execute the mandate which he has accepted, and he is liable for damages resulting from his non-execution of it while his authority continues.

He is obliged, after the extinction of the mandate, to do whatever is a necessary consequence of acts done before, and if the extinction be by the death of the mandator, he is obliged to complete business which is urgent and cannot be delayed without risk of loss or injury. — N. 1991. — C. 1729.

1710. The mandatary is bound to exercise, in the execution of the mandate, reasonable skill and all the care of a prudent administrator.

Nevertheless, if the mandate be gratuitous, the court may moderate the rigor of the liability arising from his negligence or fault, according to the circumstances. — N. 1992.

1711. The mandatary is answerable for the person whom he substitutes in the execution of the mandate, when he is not empowered to do so; and if the mandator be injured by reason of the substitution he may repudiate the acts of the substitute.

The mandatary is answerable in like manner when he is empowered to substitute, without designation of the person to be substituted, and he appoints one who is notoriously unfit.

In all these cases the mandator has a direct action against the person substituted by the mandatary. — N. 1994.

1712. When several mandataries are appointed together for the same business, they are jointly and severally liable for each other's acts

of administration, unless it is otherwise stipulated. — N. 1995.

1713. The mandatary is bound to render an account of his administration, and to deliver and pay over all that he has received under the authority of the mandate, even if it were not due; subject nevertheless to his right to deduct therefrom the amount of his disbursements and charges in the execution of the mandate.

If he have received a determinate thing he is entitled to retain it until such disbursements and charges are paid. — N. 1993. — C. 1723, 2001 § 4.

1714. He is bound to pay interest upon the money of the mandator which he employs for his own use, from the day of so employing it, and upon any remainder due to the mandator, from the time of being put in default. — N. 1996.

SECTION II.

OF THE OBLIGATIONS OF MANDATARY TOWARD THIRD PERSONS.

1715. The mandatary acting in the name of the mandator and within the bounds of the mandate is not personally liable to third persons with whom he contracts, except in the case of factors hereinafter specified in article 1738, and in the cases of contracts made by the master of a ship for her use. — N. 1997. — C. 2395. — P. 757.

1716. A mandatary who acts in his own name is liable to the third party with whom he contracts, without prejudice to the rights of the latter against the mandator also.

1717. He is liable in like manner when he exceeds his powers under the mandate, unless he has given the party with whom he contracts sufficient communication of such powers. — N. 1989, 1997.

1718. He is not held to have exceeded his powers when he executes the mandate in a manner more advantageous to the mandator than that specified by the latter.

1719. He is held to have exceeded his powers, when he does alone any thing which, by the mandate, he is charged with doing conjointly with another.

CHAPTER THIRD.

OF THE OBLIGATIONS OF THE MANDATOR.

SECTION I.

OF THE OBLIGATIONS OF THE MANDATOR TOWARD THE MANDATARY.

1720. The mandator is bound to indemnify the mandatary for all obligations contracted by him toward third persons, within the limit of his powers; and for

acts exceeding such powers, whenever they have been expressly or tacitly ratified.— N. 1998.

1721 The mandator or his legal representative is bound to indemnify the mandatary for all acts done by him within the limit of his powers, after the extinction of the mandate by death or other cause, when he is ignorant of such extinction. — C. 1760.

1722. The mandator is bound to reimburse the expenses and charges which the mandatary has incurred in the execution of the mandate, and to pay him the salary or other compensation to which he may be entitled.

When there is no fault imputable to the mandatary, the mandator is not released from such reimbursement and payment, although the business has not been successfully accomplished; nor can he reduce the amount of the reimbursement upon the ground that the expenses and charges might have been made less by himself. — N. 1999.

1723. The mandatary has a privilege and right of preference for the payment of the expenses and charges mentioned in the last preceding article, upon the things placed in his hands and upon the proceeds of the sale or disposal thereof. — C. 1743. 2001 § 4.

1724. The mandator is obliged to pay interest upon money advanced by the mandatary in the execution of the mandate. The interest is computed from the day on which the money is advanced. — N. 2001.

1725. The mandator is obliged to indemnify the mandatary who is not in fault, for losses caused to him by the execution of the mandate. — N. 2000.

1726. If a mandate be given by several persons, their obligations toward the mandatary are joint and several. — N. 2002.

SECTION II.

OF THE OBLIGATIONS OF THE MANDATOR TOWARD THIRD PERSONS.

1727. The mandator is bound in favor of third persons for all the acts of his mandatary, done in execution and within the powers of the mandate, except in the case provided for in article 1738 of this title, and the cases wherein by agreement or the usage of trade the latter alone is bound.

The mandator is also answerable for acts which exceed such power, if he have ratified them either expressly or tacitly. — N. 1998.

1728. The mandator or his legal representative is bound toward third persons for all acts of the mandatary, done in execution and within the powers of the mandate after

it has been extinguished, if its extinction be not known to such third persons. — N. 2009. — C. 1758.

1729. The mandator or his legal representative is bound for acts of the mandatary done in execution and within the powers of the mandate after its extinction, when such acts are a necessary consequence of a business already begun.

He is also bound for acts of the mandatary done after the extinction of the mandate by death or cessation of authority in the mandator, for the completion of a business, where loss or injury might have been caused by delay. — C. 1709.

1730. The mandator is liable to third parties who in good faith contract with a person not his mandatary, under the belief that he is so, when the mandator has given reasonable cause for such belief.

1731. He is liable for damages caused by the fault of the mandatary, according to the rules declared in article 1054.

CHAPTER FOURTH.

OF ADVOCATES, ATTORNEYS AND NOTARIES.

1732. Advocates, attorneys and notaries are subject to the general rules contained in this title, in so far as they can be made to apply. The profession of advocate and attorney is regulated by the provisions contained in an act intituled: *An Act respecting the Bar of Lower Canada*, and that of notary by an act intituled: *An Act respecting the Notarial Profession.*

1733. The rules concerning the duties and rights of advocates and attorneys, in the exercise of their functions before the several courts of Lower Canada, are contained in the Code of Civil Procedure, and in the rules of practice of such courts respectively.

1734. The rules of prescription relating to advocates, attorneys and notaries are contained in article 2260.

CHAPTER FIFTH.

OF BROKERS, FACTORS AND OTHER COMMERCIAL AGENTS.

1735. A broker is one who exercises the trade and calling of negotiating between parties the business of buying and selling or any other lawful transactions.

He may be the mandatary of both parties and bind both by his acts in the business for which he is engaged by them.

1736. A factor or commission merchant is an agent who is employed to buy or sell goods for another, either in his own name or in the name of his principal, for

which he receives a compensation commonly called a commission.

1737. Brokers and factors are subject to the general rules declared in this title, when these are not inconsistent with the articles of this chapter.

1738. A factor whose principal resides in another country is personally liable to third persons with whom he contracts, whether the name of the principal be known or not. The principal is not liable on such contracts to the third parties, unless it is proved that the credit was given to both principal and factor, or to the principal alone. — C. 1715, 1727.

1739. Any person may contract for the purchase of goods with any agent entrusted with their possession or to whom the same have been consigned, and may receive the same from such agent and pay him the price thereof, and such contract and payment is binding upon the owner of the goods, notwithstanding the purchaser has notice that he is contracting only with an agent.

1740. Any agent entrusted with the possession of goods, or of the documents of title thereto, is deemed the owner thereof for the following purposes, that is to say:

1. To make a sale or contract, as mentioned in the last preceding article;

2. To entitle the consignee of goods consigned by such agent, to a lien thereon for any money or negotiable security advanced or given by him to or for the use of such agent, or received for him by such agent for the use of the consignee, in like manner as if such agent were the true owner of the goods;

3. To give validity to any contract or agreement, by way of pledge, lien or security, made in good faith with such agent, as well for an original loan, advance or payment made upon the security of the goods or documents, as for any other or continuing advance in respect thereof;

4. To make such contract binding upon the owner of the goods and all other persons interested therein, notwithstanding the person claiming such pledge or lien had notice that he was contracting only with an agent. — C. 2001 § 4.

1741. In case any person having a valid lien and security on any goods or documents of title or negotiable security, in respect of a previous advance upon a contract with an agent, gives up the same to such agent, upon a contract for the pledge, lien or security of other goods, or of another document or security, by such agent delivered to him in exchange, to be held upon the same lien as the goods, document or security so given up,

then, such new contract, if in good faith, is deemed a valid contract, made in consideration of a present advance in money, within the provisions of this chapter, but the lien acquired under such new contract, on the goods, document or security, deposited in exchange, cannot exceed the value of the goods, document or security, so delivered up and exchanged.

1742. Such contracts only are valid as are mentioned in this chapter, and such loans, advances and exchanges only are valid as are made in good faith and without notice that the agent making the same has no authority so to do, or that he is acting in bad faith against the owner of the goods.

1743. Loans, advances and exchanges in good faith, though made with notice of the agent not being the owner, but without notice of his acting without authority, bind the owner and all other persons interested in the goods, documents or security, as the case may be.

1744. No antecedent debt owed by an agent entrusted with the possession of goods or the documents of title thereto, can be the subject of any lien or pledge of such goods or documents, nor can the agent for any purpose relating to such goods deviate from the orders or authority received from his principal.

1745. Bills of lading, warehouse-keeper's or wharfinger's receipts or orders for delivery of goods, bills of inspection of potash or pearlash, and all other documents used in the ordinary course of business, as proof of the possession or control of goods, or purporting to authorize, either by endorsement or by delivery, the possessor of any such document to transfer or receive goods thereby represented, are deemed documents of title within the provisions of this chapter.

1746. Any agent possessed of any document of title, whether derived immediately from the owner of the goods, or obtained by reason of the agent having been entrusted with the possession of the goods, or of any document of title thereto, is deemed to be entrusted with the possession of the goods represented by such document of title.

1747. Any contract pledging or giving a lien upon any document of title, is deemed a pledge of and lien upon the goods to which it relates, and the agent is deemed the possessor of the goods or documents of title, whether the same be in his actual custody or be held by any other person for him or subject to his control.

1748. When a loan or ad-

vance is made in good faith, to an agent entrusted with and in possession of goods or documents of title, on the faith of any contract in writing to consign, deposit, transfer or deliver such goods, or documents of title, and the same are actually received by the person making the loan or advance, either at the time of the contract or at a time subsequent thereto, without notice that the agent is not authorized to make the pledge or security, such loan or advance is deemed a loan or advance upon the security of the goods or documents of title within the provisions of this chapter.

1749. Every contract, whether made directly with the agent or with a clerk or other person on his behalf, is deemed a contract with such agent.

1750. Every payment, whether made by money, bill of exchange or other negotiable security, is deemed an advance within the provisions of this chapter.

1751. Every agent in possession of goods or documents as aforesaid is for the purposes of this chapter taken to be entrusted therewith by the owner, unless the contrary is shewn in evidence.

1752. Nothing contained in this chapter lessens or affects the civil responsibility of the agent for the breach of any obligation, or the nonfulfilment of his orders or authority.

1753. Notwithstanding any of the foregoing articles, the owner may redeem any goods or documents of title pledged as aforesaid, at any time before the same have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which the lien exists, and upon payment or satisfaction to the agent, of any sum of money for or in respect of which such agent is entitled to retain the goods or documents by way of lien against such owner; or he may recover from the person with whom any goods or documents have been pledged, or who has any lien thereon, any balance or sum of money remaining in his hands as the produce of the sale of the goods, after deducting the amount of the lien under the contract.

1754. In case of the bankruptcy of any agent, and in case the owner of the goods redeem the same, he is held, in respect of the sum paid by him on account of the agent for such redemption, to have paid the same for the use of such agent before his bankruptcy, or in case the goods have not been so redeemed, the owner is deemed a creditor of the agent for the value of the goods so pledged at the time of the pledge, and may in either case claim

or set off the sum so paid, or the value of such goods as the case may be.

CHAPTER SIXTH.

OF THE TERMINATION OF MANDATE.

1755. Mandate terminates:

1. By revocation;

2. By the renunciation of the mandatary;

3. By the natural death of the mandator or mandatary; 6 Ed. VII., c. 38, s. 2.

4. By interdiction, bankruptcy, or other change in the condition of either party by which his civil capacity is affected;

5. By the cessation of authority in the mandator;

6. By the accomplishment of the business or the expiration of the time for which the mandate is given;

7. By other causes of extinction common to obligations. — N. 2003.

1756. The mandator may at any time revoke the mandate, and oblige the mandatary to return to him the procuration, if it be an original instrument. — N. 2004.

1757. The appointment of a new mandatary for the same business has the effect of a revocation of the first appointment from the day on which the former mandatary has been notified of the new appointment. — N. 2006.

1758. If notice of the revocation be given to the mandatary alone, it does not affect third persons who in ignorance of it have contracted with the mandatary, saving to the mandator his right against the latter. — N. 2005. — C. 1728.

1759. The mandatary may renounce the mandate after acceptance, on giving due notice to the mandator. But if such renunciation be injurious to the latter, the mandatary is answerable in damages, unless there is a reasonable cause for the renunciation. If the mandatary be acting for a valuable consideration he is liable according to the general rules relating to the inexecution of obligations. — N. 2007.

1760. Acts of the mandatary, done in ignorance of the death of the mandator or other cause whereby the mandate is extinguished, are valid. — N. 2008. — C. 1721.

1761. The legal representatives of the mandatary, having a knowledge of the mandate and not being incapacitated by minority or otherwise, are bound to give notice of his death to the mandator and to do, in business already begun, whatever is immediately necessary to protect the latter from loss. — N. 2010.

TITLE NINTH.

OF LOAN.

GENERAL PROVISIONS.

1762. Loans are of two kinds:

1. The loan of things which may be used without being destroyed, called loan for use (*commodatum*);

2. The loan of things which are consumed by the use made of them, called loan for consumption (*mutuum*). —N. 1874.

CHAPTER FIRST.

OF LOAN FOR USE (COMMODATUM).

SECTION I.

GENERAL PROVISIONS.

1763. Loan for use is a contract by which one party, called the lender, gives to another, called the borrower, a thing to be used by the latter gratuitously for a time, and then to be returned by him to the former. — N. 1875, 1876.

1764. The lender continues to be the owner of the thing lent. — N. 1877.

1765. Every thing may be loaned for use which may be the object of the contract of lease or hire. — N. 1878. — C. 1605, 1606.

SECTION II.

OF THE OBLIGATIONS OF THE BORROWER.

1766. [The borrower is bound to bestow the care of a prudent administrator in the safe-keeping and preservation of the thing loaned.]

He cannot apply the thing to any other use than that for which it is intended by its nature or by agreement. — N. 1880.

1767. If the borrower apply the thing to any other use than that for which it is intended, or use it for a longer time than is agreed upon, he is liable for the loss of it arising even from a fortuitous event. — N. 1881.

1768. If the thing lent be lost by a fortuitous event from which the borrower might have preserved it by using his own, or if being unable to save both things he prefer to save his own, he is liable for the loss. — N. 1882.

1769. If the thing deteriorate by the use alone for which it is lent and without

fault on the part of the borrower, he is not liable for the deterioration. — N. 1884.

1770. The borrower cannot retain the thing lent for a debt due to him by the lender, unless such debt is for expenses necessarily incurred in the preservation of the thing. — N. 1885. — C. 1775, 2001.

1771. If in order to use the thing the borrower have incurred expense, he is not entitled to recover it from the lender. — N. 1886.

1772. If several persons conjointly borrow the same thing, they are jointly and severally obliged toward the lender. — N. 1887.

SECTION III.

OF THE OBLIGATIONS OF THE LENDER.

1773. The lender cannot take back the thing, or disturb the borrower in the proper use of it, until after the expiration of the term agreed upon, or, if there be no agreement, until after the thing has been used for the purpose for which it was borrowed; subject nevertheless to the exception declared in the next following article. — N. 1888.

1774. If before the expiration of the term, or, if no term have been agreed upon, before the borrower has completed his use of the thing, there occur to the lender a pressing and unforeseen need of it, the court may, according to the circumstances, oblige the borrower to restore it to him.— N. 1889.

1775. If during the continuance of the loan the borrower be obliged, for the preservation of the thing lent, to incur any extraordinary and necessary expense, of so urgent a nature that he cannot notify the lender, the latter is bound to reimburse it to him. — N. 1890. — C. 1770.

1776. When the thing lent has defects which cause injury to the person using it, the lender is responsible if he knew the defects and did not make them known to the borrower. — N. 1891.

CHAPTER SECOND.

OF LOAN FOR CONSUMPTION (MUTUUM).

SECTION I.

GENERAL PROVISIONS.

1777. Loan for consumption is a contract by which the lender gives the borrower a certain quantity of things which are consumed by the use made of them, under the obligation by the latter to return a like quantity of things of the same kind and quality. — N. 1892.

1778. By loan for consumption the borrower becomes

owner of the thing lent, and the loss of it falls upon him. — N. 1893.

1779. The obligation which results from a loan in money is for the numerical sum received.

If there be an increase or diminution in the value of the currency before the time of the payment, the borrower is obliged to return the numerical sum lent, and only that sum, in money current at the time of payment. — N. 1895.

1780. If the loan be in bullion or of provisions, the borrower is obliged to return the same quantity and quality as he has received and nothing more, whatever may be the increase or diminution of the price of them. — N. 1896, 1897.

SECTION II.

OF THE OBLIGATIONS OF THE LENDER.

1781. In making a loan for consumption the lender must have the right to alienate the thing loaned, and he is subject to the obligations declared in article 1776, relating to loan for use. — N. 1898.

SECTION III.

OF THE OBLIGATIONS OF THE BORROWER.

1782. The borrower is obliged to return for the things lent a like quantity of other things of the same kind and quality, at the time agreed upon.—N. 1899, 1902.

1783. If there be no agreement by which the time for the return can be determined, it is fixed by the court according to circumstances. — N. 1900, 1901.

1784. If the borrower make default of satisfying the obligation to return things lent, he is bound at the option of the lender to pay the value which they bore at the time and place at which, according to the agreement, the return was to be made;

If the time and place of the return be not agreed upon, payment must be made of the value which the things bore at the time and place of the borrower being put in default;

With interest in both cases from the default. — N. 1903, 1904. 1571.

CHAPTER THIRD.

OF LOAN UPON INTEREST.

1785. Interest upon loans is either legal or conventional.

The rate of legal interest is fixed by law at 5 per cent. yearly. — 63-4 V., Ca., c. 29.

The rate of conventional interest may be fixed by agreement between the parties, with the exception;

1. Of certain corporations mentioned in the *law respecting interest*, which cannot re-

ceive more than the rate per cent. therein mentioned;

2. Of certain other corporations, which are limited as to the rate of interest by special acts;

3. Of banks, which are not subject to any penalties for usury, but which cannot recover more than seven per cent. — R. S. Q., 6240; R. S. C., c. 127, and amendments. — Banking Act, 53 V., Ca., c. 31, and amendments of 1900.[2] — N. 1907. (P77-1078

1786. An acquittance for the principal debt creates a presumption of payment of the interest, unless there is a reserve of the latter. — N. 1908.

CHAPTER FOURTH.

OF CONSTITUTION OF RENT.

1787. Constitution of rent is a contract by which parties agree that yearly interest shall be paid by one of them upon a sum of money due to the other or furnished by him, to remain permanently in the hands of the former as a capital of which payment shall not be demanded by the party furnishing it, except as hereinafter provided.

It is subject with respect to the rate of interest to the same rules as loans upon interest. — N. 1909. — C. 388 et s.

1788. Constitution of rent may likewise be made by gift or will.

1789. Rents may be constituted either in perpetuity or for a term. When constituted in perpetuity they are essentially redeemable by the debtor; subject to the provisions contained in articles 390, 391 and 392. — N. 1910, 1911. — C. 2248.

1790. The capital of a rent constituted in perpetuity may be demanded:

1. When the debtor of it fails to furnish and maintain the security to which he is obliged by the contract;

2. When the debtor becomes bankrupt or insolvent;

3. In the cases provided in articles 390, 391 and 392. — N. 1912, 1913.

1791. The rules concerning the prescription of arrears of constituted rents are contained in the title *Of Prescription.* — C. 2250.

1792. The creditor of a constituted rent secured by the privilege and hypothec of a vendor has a right to demand that the sale under execution of property upon which such privilege and hypothec exists shall be made subject to the rent. — C. 1593 et s. — P. 724.

1793. The rules concerning life-rents are declared under the title *Of Life-Rents.*

[2] *Vide* 60-1 V., Ca., c. 8 amended by 63-4 V., c. 29. (80 (al-S

TITLE TENTH.

OF DEPOSIT.

1794. There are two kinds of deposit; simple deposit, and sequestration.—N. 1916.

CHAPTER FIRST.

OF SIMPLE DEPOSIT.

SECTION I.

GENERAL PROVISIONS.

1795. It is of the essence of simple deposit that it be gratuitous. — N. 1917.

1796. Moveable property only can be the object of simple deposit. — N. 1918.

1797. Delivery is essential to the formation of the contract of deposit.

The delivery is sufficient when the depositary is already in possession, under any other title, of the thing which is the object of the deposit. — N. 1919.

1798. Simple deposit is either voluntary or necessary. — N. 1920.

SECTION II.

OF VOLUNTARY DEPOSIT.

1799. Voluntary deposit is that which is made by the mutual consent of the party making and of the party receiving it. — N. 1921.

1800. Voluntary deposit can take place only between persons capable of contracting.

Nevertheless if a person capable of contracting accept a deposit made by a person incapable, he is liable to all the obligations of a depositary; which obligations may be enforced against him by the tutor or other administrator of the incapable person. — N. 1925.

1801. If the deposit have been made with a person incapable of contracting, the party making it has a right to revendicate the thing deposited, so long as it remains in the hands of the former, and afterwards a right to demand the value of the thing in so far as it has been profitable to the depositary. — N. 1926.

SECTION III.

OF THE OBLIGATIONS OF THE DEPOSITARY.

1802. [The depositary is bound to apply in the keep-

ing of the thing deposited the care of a prudent administrator.] — N. 1927, 1928.

1803. The depositary has no right to use the thing deposited without the permission of the depositor. — N. 1930.

1804. The depositary is bound to restore the identical thing which he has received n deposit.

If the thing have been taken from him by irresistible force and something given in exchange for it, he is bound to restore whatever he has received in exchange. — N. 1932, 1934.

1805. The depositary is only held to restore the thing deposited, or such portion of it as remains, in the condition in which it is at the time of restoration. Deteriorations not caused by his fault fall upon depositor. — N. 1933.

1806. The heir or other legal representative of the depositary who sells the thing deposited, in good faith and in ignorance of the deposit, is held only to restore the price received for it, or to transfer his right against the buyer if the price have not been paid. — N. 1935.

1807. The depositary is bound to restore any profits received by him from the thing deposited.

He is not bound to pay interest on money deposited unless he is in default of restoring it. — N. 1936.

1808. The depositary cannot exact from the depositor proof that he is owner of the thing deposited. — N. 1938.

1809. The restoration of the thing deposited must be made at the place agreed upon, and the cost of conveying it there is borne by the depositor.

If no place be agreed upon, the restoration must be made at the place where the thing is. — N. 1942, 1943.

1810. The depositary is obliged to restore the thing to the depositor whenever it is demanded, although the delay for its restoration may have been fixed by the contract, unless he is prevented from so doing by reason of an attachment, or opposition, or other legal hindrance, or has a right of retention of the thing, as declared in article 1812. — N. 1944. — C. 2203.

1811. All the obligations of the depositary cease if he establish that he is owner of the thing deposited. — N. 1946.

SECTION IV.

OF THE OBLIGATIONS OF THE DEPOSITOR.

1812. The depositor is bound to reimburse the depositary for the expenses incurred by the latter in the preservation and care of the thing, and to indemnify him for all losses that the deposit may have caused to him.

The depositary has a right to retain the thing deposited until such expenses and losses are paid to him. — N. 1947, 1948. — C. 2001.

SECTION V.

OF NECESSARY DEPOSIT.

1813. Necessary deposit is that which takes place under an unforseen and pressing necessity arising from accident or irresistible force, as in case of fire, shipwreck, pillage or other sudden calamity. It is, in other respects, subject to the same rules as voluntary deposit, with the exception of the mode of proof. — N. 1949, 1950. — C. 1233 § 4.

1814. Keepers of inns, of boarding-houses and of taverns, are responsible as depositaries for the things brought by travellers who lodge in their houses.

The deposit of such things is considered a necessary deposit. — N. 1952.

1815. The persons mentioned in the last preceding article are responsible if the things be stolen or damaged by their servants or agents, or by strangers coming and going in the house, but are not liable to make good to any guest, any theft of, or injury to goods or property brought to their houses, not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of two hundred dollars, except in the following cases:

1. Where such goods or property have been stolen, lost, or injured through their wilful act, default, or neglect, or of any servant in their employ;

2. Where such goods or property have been deposited expressly for safe custody with them,

Provided always, that, in case of such deposit, such persons may, if they think fit, require, as a condition of liability, that such goods or property be deposited in a box or other receptacle fastened and sealed by the person depositing the same.

If any such persons refuse to receive for safe custody, any goods or property of their guests, or if any such guest, through any default of such person, be unable to deposit such goods or property, such persons are not entitled to the benefit of this article, in respect of such goods or property.

Such persons must cause to be kept conspicuously posted in the office and public rooms, and in every bedroom in their establishments, a copy of this article, printed in plain type; and they are entitled to the benefit of its provisions in respect of such goods or property only as are brought to their establishment while such copy is so posted.

Such persons are not responsible if the theft be committed by force of arms or the damage be caused by irresistible force; nor are they responsible if it be proved that the loss or damage is caused by a stranger and has arisen from neglect or carelessness on the part of the person claiming. — R. S. Q., 5818. — N. 1953, 1954. — C. 1672.

1816. The rules declared in article 1677, subject to the provisions of the preceding article, apply also to the liability of keepers of inns, boarding-houses and taverns and as regards the oath to be offered. — *Id.* 5819. — P. 372.

SECTION V (A).

OF THE LIEN OF INNKEEPERS UPON THE GOODS OF THEIR GUESTS.

1816*a*. Persons keeping a hotel, inn, tavern, public house or other place of refreshment, and boarding-house keepers and lodging-house keepers have a lien on the baggage and property of their guests, boarders, or lodgers, for the value or price of any food or accommodation furnished to them.

They have, in addition to all other remedies, the right, in case the amount remains unpaid for three months, to sell such baggage and property by public auction, on giving one week's notice of such intended sale, by advertisement in a newspaper published in the municipality in which such hotel, inn, tavern, public house, place of refreshment, boarding-house, or lodging-house, is situate, or in case there is no newspaper published in such municipality, in a newspaper published nearest thereto.

The notice must state the name of the guest, boarder or lodger, the amount of his indebtedness, a description of the baggage or other property to be sold, the time and place of sale, and the name of the auctioneer.

After such sale, such innkeeper, hotel-keeper, boarding-house keeper or lodging-house keeper may apply the proceeds of such sale in payment of the amount due to him, and the costs of such advertising and sale, and must pay the surplus (if any) to the person entitled thereto on application being made by him therefor. — *Id.* 5820. — N. 2102. — C. 2001.

CHAPTER SECOND.

OF SEQUESTRATION.

1817. Sequestration is either conventional or judicial. — N. 1955.

SECTION I.

OF CONVENTIONAL SEQUESTRATION.

1818. Conventional sequestration is the deposit made

by two or more persons of a thing in dispute, in the hands of a third person who obliges himself to restore it after the termination of the contest, to the person to whom it may be adjudged.— N. 1956.

1819. Sequestration is not essentially gratuitous. It is in other respects subject to the rules generally applicable to simple deposit, when these are not inconsistent with the articles of this chapter. — N. 1957, 1958.

1820. Sequestration may have for its object immoveable as well as moveable property. — N. 1959.

1821. The sequestrator cannot be discharged until the termination of the contestation, unless it is by the consent of all the parties interested, or by the court for sufficient cause. — N. 1960.

1822. When the sequestration is not gratuitous it is assimilated to the contract of lease and hire, and the obligations of the sequestrator for the safe-keeping of the thing are the same as those of the lessee.

SECTION II.

OF JUDICIAL SEQUESTRATION.

1823. Sequestration or deposit may take place by judicial authority:

1. Of moveable property seized under process of attachment or taken in execution of a judgment;

2. Of money or other things tendered and deposited by a debtor in a suit pending;

3. The court or the judge upon application by the interested party may, according to circumstances, order the sequestration of a thing, moveable or immoveable, concerning the property or possession of which two or more persons are in litigation. — N. 1961. — 60 V., c. 50, s. 27. — P. 680, 713, 800, 864, 951. [1]

1824. The sequestration may also take place by judicial authority in the following cases specified in this code:

1. When the usufructuary cannot give security as specified in article 465.

2. When the substitute is put in possession under article 955.

1825. The guardian or sequestrator appointed by judicial authority is bound to apply to the safe-keeping of the things seized the care of a prudent administrator.

He is subject to the duties and obligations imposed upon the guardians in seizures under execution. — 60 V., c. 50, s. 28.

He is bound to produce the things either for the purpose of being sold in due course of law or to be

[1] Vide 5183a, 5183b, 5183c, 5183d, 5183e of R. S. Q., as replaced 56 V., c. 3, and 60 V., c. 44; these articles relate to the sequestration of certain railways.

delivered to the party entitled to them under the judgment of the court.

He is also bound to render an account of his administration when judgment is rendered in the cause, and as often as is ordered by the court or the judge during its pendency.

He is entitled to be paid, by the party seizing, such compensation as is fixed by law or by the court or the judge, unless he has been prevented by the party on whom the seizure is made.— N. 1962. — 60 V., c. 50, s. 28.

1825*a*. If among the things sequestrated some are consumable or perishable, the sequestrator may cause them to be sold, upon observing the formalities prescribed for the sale of moveable property under execution. — 60 V., c. 50, s. 29.

1825*b*. If the thing sequestrated consist in a right of enjoyment, the sequestrator, if there is no conventional lease, is bound to give out the lease by auction. — *Ibid.*

1826, The thing sequestrated cannot be leased directly nor indirectly to any of the parties in the contest concerning it.

1826*a*. Repairs or other necessary expenditure cannot be made upon the premises sequestrated without the authorization of the court or of the judge, upon petition of which the parties have received notice. — 60 V., c. 50, s. 30.

1827. The sequestrator appointed by judicial authority, to whom the thing has been delivered, is subject to all the obligations which attach to conventional sequestration. — N. 1963.

1827*a*. A sequestrator is discharged by law upon his delivering the property sequestrated to the party named in the judgment. — 60 V., c. 50, s. 31.

1828. The judicial sequestrator may obtain his discharge after the lapse of three years, unless, for special reasons, the court has continued his functions beyond that period.

He may also be discharged by the court within that time upon cause shewn.

1829. The special rules concerning judicial sequestration or deposit are contained in the Code of Civil Procedure. — P. 594, § 8, 621 et s., 657 et s., 669, 833, § 2, 973 et s.

TITLE ELEVENTH.

OF PARTNERSHIP.

CHAPTER FIRST.

GENERAL PROVISIONS.

1830. It is essential to the contract of partnership that it should be for the common profit of the partners, each of whom must contribute to it property, credit, skill, or industry. — N. 1832, 1833.

1831. Participation in the profits of a partnership carries with it an obligation to contribute to the losses.

Any agreement by which one of the partners is excluded from participation in the profits is null.

An agreement by which one partner is exempt from liability for the losses of the partnership is null only as to third persons. — N. 1855.

1832. If no time for the commencement of the partnership be designated, it takes effect from the date of the contract. — N. 1843.

1833. If the term of the partnership be not designated, it is considered to be for the life of the partners; subject to the provisions contained in the fifth chapter of this title. — N. 1844. — C. 1895.

1834. In partnerships for trading, manufacturing or mechanical purposes, or for the construction of roads, dams and bridges, or for the purpose of colonization, or of settlement, or of land traffic, the partners must deliver to the prothonotary of the Superior Court in each district, and to the registrar of each county, in which they carry on business, a declaration in writing, in the form and subject to the rules provided in the statute intituled: *An act respecting partnerships.*

The omission to deliver such declaration does not render the partnership null; it subjects the contravening parties to the penalties and liabilities imposed by the statute.[1]

Every married person doing business as a trader, whether alone or in partnership with others, shall be bound, under the above mentioned penalties, to register, in the office of the prothono-

[1] *Vide* 5183*a*, 5183*b*, 5183*c*, 5183*d*, 5183*e* of R. S. Q., as replaced by 56 V., c. 3 and 60 V., c. 44; these articles relate to the sequestration of certain railways.

tary of the Superior Court of the district wherein such business is carried on, within sixty days from the day on which trading commenced, or within sixty days from the date of his marriage, a declaration in writing stating if he is under community or is separate as to property; in case of community of property, if by contract of marriage, and in case of separation of property, if by marriage contract or by judgment; if by marriage contract, the declaration shall mention the date, the name of the notary before whom the deed was passed and the domicile of the latter when the contract was made; and, if by judgment, the declaration shall mention the number of the case, the date of the judgment and the name of the district in which the judgment was rendered.

The prothonotary of each district shall keep a register for this purpose. — 2 Ed. VII., c. 38.

1834*a*. A similar declaration must be also made by any person carrying on business alone under a firm name. — R. S. Q., 5821.

1834*b*. Whenever any person or persons make use in business of the name of another person, the contracts, agreements, notices, advertisements, signs, bills of exchange, promissory note, endorsements, cheques, orders for money or goods, bills of parcels, receipts and letters, which they make, publish, sign or issue under such name in the course of business, shall bear, after such name, the word: "registered" or an abbreviation thereof.

1834*c*. Any person committing an infringement of the provisions of this article is liable to the penalty prescribed by article 5639 of the Revised Statutes which penalty may be recovered in the manner therein provided.

Nothing in this act shall be interpreted as giving any person the right to do business under the name of another without the latter's consent. — 5 Ed. VII., c. 29.

1835. The allegations contained in the declaration mentioned in the last preceding article cannot be controverted by any person who has signed the same, nor can they be controverted, as against any party not being a partner, by a person who has not signed but was really a member of the partnership at the time the declaration was made; and no partner, whether he has signed or not, is deemed to have ceased to be a partner until a new declaration has been made and filed as aforesaid, stating the alteration in the partnership. 4 (1865-6)

1836. Any partner, although not mentioned in the declaration, may be sued jointly and severally with

the partners mentioned therein, or the latter may be sued alone, and, if judgment be recovered against them, any other partner or partners may be sued on the original cause of action on which such judgment was rendered.

1837. When persons are associated as partners in Lower Canada for any of the purposes mentioned in article 1834, and no declaration has been filed as aforesaid, any action which might be brought against all the members of the partnership, may also be brought against any one or more of them, as carrying on or as having carried on trade jointly with others, without naming such others in the writ or declaration, under the name and style of their partnership firm; and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment has been rendered; but when any such action is founded on an obligation or instrument in writing in which all or any of the partners bound by it are named, then all the partners named therein must be made parties to such action.

1838. The service of summons or process, for any claim or demand founded upon any liability of an existing partnership, at the office or place of business of such partnership within the province of Canada, has the same effect as a service made upon the members of such partnership personally, and any judgment rendered against any member of such existing partnership, for a partnership debt or liability, may be enforced by process of execution against the partnership property in the same manner as if the judgment had been rendered against the partnership. — P. 122, 139.

CHAPTER SECOND.

OF THE OBLIGATIONS AND RIGHTS OF PARTNERS AMONG THEMSELVES.

1839. Each partner is a debtor to the partnership for all that he has agreed to contribute to it.

When such contribution consists of a certain thing and the partnership is evicted of it, the partner is subject to warranty in the same manner as a seller is in favor of the buyer. — N. 1845. — C. 1508 et s.

1840. A partner who fails to pay any sum of money which he has agreed to contribute to the partnership is liable for interest on such sum from the day of his default.

He is also liable for interest upon any sum taken by him from the partnership funds for his particular ben-

efit, from the day that he has withdrawn it. — C. 1846.

1841. The provisions contained in the last two preceding articles are without prejudice to the rights of the other partners to damages against the partner in default, and to obtain a dissolution of the partnership, according to the rules contained in the title *Of Obligations* and in article 1896.

1842. A partner cannot carry on privately any business or adventure which deprives the partnership of a portion of the skill, industry, or capital which he is bound to employ therein. If he do so, he is obliged to account to the partnership for the profits of such business. — N. 1847.

1843. When a partner is creditor individually of a person who is also indebted to the partnership, and both debts are actually payable, the imputation of any payment received by him from the debtor, is made upon both debts in proportion to their respective amounts, although by the receipt, he may have imputed it upon his private debt only; but if by the receipt he impute the payment wholly upon the partnership debt, such imputation is to be maintained. — N. 1848.

1844. — When a partner has been paid his full share of a debt due to the partnership, and the debtor becomes insolvent, such partner is obliged to return to the partnership what he has received, although he may have given a discharge specially for his part. — N. 1849.

1845. Each partner is liable to the partnership for damages caused by his fault. He cannot set up in compensation of such damages the profits which the partnership has derived from his industry in other affairs. — N. 1850.

1846. A certain and determinate thing which does not consume by use, and of which the enjoyment only is contributed to the partnership, is at the risk of the partner who is the owner of it.

Things which consume by use or deteriorate by keeping, or which are intended to be sold, or are contributed to partnership at a fixed valuation, are at the risk of the partnership. — N. 1851. — C. 1893.

1847. A partner has a right against the partnership not only to recover money disbursed by him for it, but also to be indemnified for obligations contracted by him in good faith in the business of the partnership, and for the risks inseparable from his management. — N. 1852.

1848. [When there is no agreement concerning the shares of the partners in the profits and losses of the partnership, they share equally]. — N. 1853.

1849. A partner charged

with the management of the business of the partnership by a special clause in the contract, may perform all acts connected with his management, notwithstanding the opposition of the other partners, provided he act without fraud.

Such power of management cannot be revoked without sufficient cause while the partnership continues; but if the power be given by an instrument posterior to the contract of partnership, it is revokable in the same manner as a simple mandate. — N. 1856.

1850. When several of the partners are charged with the management of the business of the partnership generally, and without a provision that one of them shall not act without the others, each of them may act separately; but if there be such a provision, one of them cannot act in the absence of the others, although it be impossible for the latter to join in the act. — N. 1857, 1858.

1851. If there be no special stipulation as to the management of the business of the partnership, the following rules apply:

1. The partners are presumed to have mutually given to each other a mandate for the management, and whatever is done by one of them binds the others; saving the right of the latter, together or separately, to object to any act before it is concluded;

2. Each partner may use the things belonging to the partnership, provided he apply them to their customary and destined use, and that he do not use them against the interest of the partnership, or in a manner to prevent his copartners from making use of them according to their right;

3. Each partner may compel his copartners to bear with him the expenses which are necessary for the preservation of the property of the partnership;

4. One of the partners cannot make alterations in the immoveable property of the partnership without the consent of the others, although he should establish that such alterations are advantageous. — N. 1859.

1852. A partner who has no right of management cannot alienate or otherwise dispose of anything which belongs to the partnership; saving the rights of third persons as hereinafter declared. — N. 1860.

1853. Each partner may, without the consent of his copartners, associate with himself a third person in the share he has in the partnership. He cannot without such consent associate him in the partnership. — N. 1861.

CHAPTER THIRD.

OF THE OBLIGATIONS OF PARTNERS TOWARD THIRD PERSONS.

1854. Partners are not jointly and severally liable for the debts of the partnership. They are liable to the creditor in equal shares, although their shares in the partnership may be unequal.

This article does not apply in commercial partnerships. — N. 1862, 1863. — C. 1105, 1873.

1855. A stipulation that the obligation is contracted for the partnership binds only the partner contracting, when he acts without the authority, express or implied, of his copartners; unless the partnership is benefited by his act, in which case all the partners are bound. — N. 1864.

1856. The liabilities of partners for the acts of each other are subject to the rules contained in the title *Of Mandate*, when not regulated by any article of this title.

CHAPTER FOURTH.

OF THE DIFFERENT KINDS OF PARTNERSHIPS.

1857. Partnerships are either universal or particular.

They are also either civil or commercial. — N. 1835.

SECTION I.

OF UNIVERSAL PARTNERSHIPS.

1858. Universal partnership may be either of all the property or of all the gains of the partners. — N. 1836.

1859. In universal partnership of property all the property of the partners, moveable and immoveable, and all their gains, as well present as future, are put in common. — N. 1837, 1838.

1860. Parties contracting a universal partnership are presumed to intend only a partnership of gains, unless the contrary is expressly stipulated. — N. 1839.

1861. In a universal partnership of gains is included all that the partners acquire by their industry in whatever employment they are engaged during the continuance of the partnership. The moveable property and the enjoyment of the immoveables possessed by the partners at the date of the contract are also included; but the immoveables themselves are not included. — N. 1838.

SECTION II.

OF PARTICULAR PARTNERSHIPS.

1862. Particular partnerships are those which apply only to certain determinate

objects. A partnership contracted for a single enterprise or for the exercise of any art or profession is also a particular partnership. — N. 1841, 1842.

SECTION III.

OF COMMERCIAL PARTNERSHIPS.

1863. Commercial partnerships are those which are contracted for carrying on any trade, manufacture or other business of a commercial nature, whether general or limited to a special branch or adventure. All other partnerships are civil partnerships.

1864. Commercial partnerships are divided into;

1. General partnerships;
2. Anonymous partnerships;
3. Partnerships *en commandite*, or limited partnerships;
4. Joint-stock companies.

They are governed by the rules common to other partnerships, when these are not inconsistent with the rules contained in this section, and with the laws and usages specially applicable in commercial matters. — N. 1873. — C. 1854.

§ 1. OF GENERAL PARTNERSHIPS.

1865. General partnerships are those contracted for the purpose of carrying on business under a collective name or firm consisting ordinarily of the names of the partners, or of one or more of them, all of whom are jointly and severally liable for the obligations of the partnership.

1866. The partners may make such stipulations among themselves concerning their respective powers in the management of the partnership business as they see fit, but with respect to third persons dealing with them in good faith, each partner has an implied power to bind the partnership for all obligations contracted in its name and in its usual course of dealing and business.

1867. The partners are liable for obligations contracted by one of them, in his own name, only when the obligation is for objects which are in the usual course of dealing and business of the partnership, or are applied to its use.

1868. Dormant or unknown partners are, during the continuance of the partnership, subject to the same liabilities toward third persons as ordinary partners under a collective name. — C. 1900 § 5.

1869. Nominal partners, and persons who give reasonable cause for the belief that they are partners, although not so in fact, are liable as such to third parties dealing in good faith under that belief. — C. 1730.

§ 2. OF ANONYMOUS PARTNERSHIPS.

1870. In partnerships having no name or firm, whether they are general or confined to a single object or adventure, the partners are subject to the same liabilities in favor of third persons as in ordinary partnerships under a collective name.

§ 3. OF PARTNERSHIPS EN COMMANDITE OR LIMITED PARTNERSHIPS.

1871. Partnerships *en commandite*, or limited partnerships, for the transaction of any mercantile, mechanical, or manufacturing business, other than the business of banking and of insurance, may be formed under the statute intituled, *An act respecting limited partnerships.*[1]

1872. Such partnerships consist of one or more persons called general partners, and of one or more persons who contribute in cash payments a specific sum or capital to the common stock and who are called special partners.

1873. The general partners are jointly and severally responsible in the same manner as ordinary partners under a collective name; but special partners are not liable for the debts of the partnership beyond the amounts contributed by them to the capital.

1874. The general partners only can be authorized to transact business and sign for the partnership, and to bind the same.

1875. Persons contracting limited partnerships are bound to make and severally sign a certificate containing:

1. The name or firm of the partnership;

2. The general nature of the business to be carried on;

3. The names of all the general and special partners, distinguishing which are general and which special, and their usual place of residence;

4. The amount of capital stock contributed by each special partner;

5. The period at which the partnership commences and that of its termination.

Such certificate is to be made, filed and recorded in the form and manner prescribed in the statute specified in article 1871.[1]

1876. The partnership is not deemed to be formed until the certificate is made, filed and recorded, as indicated in the last preceding article.

1877. If any false statement be made in the certificate, all the persons interested in the partnership are liable for its obligations, in the same manner as or-

[1] Vide R. S. Q. 5640.

dinary partners under a collective name.

1878. In case of any renewal or continuance of the partnership beyond the time originally fixed for its duration, a certificate thereof must be made, filed and recorded in the manner required for the original formation. Any partnership otherwise renewed or continued is deemed a general partnership.

1879. Every alteration in the names of the [general] partners, in the nature of the business, or in the capital or shares, or in any matter, [other than the names of the special partners,] specified in the original certificate, is deemed a dissolution of the partnership; and if it be carried on after such alteration, it is deemed a general partnership, unless renewed as a limited partnership in the manner provided in the last preceding article. — C. 1892 § 9.

1880. The business of the partnership is to be conducted under a partnership name or firm, in which the name of the general partners only, or of one or more of them, is used; and if the name of a special partner be used in the firm with his privity, he is deemed a general partner.

1881. Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners.

1882. No part of the sum which any special partner has contributed to the capital stock can be withdrawn by him, or paid or transferred to him in the form of dividends, profits or otherwise, during the continuance of the partnership; but he may annually receive lawful interest on the sum so contributed by him, if the payment of such interest do not reduce the original amount of the capital, and he may also receive his portion of the profits.

1883. If by the payment of interest or supposed profits the original capital be reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the deficient capital, with interest.

1884. A special partner may, from time to time, examine into the state and progress of the affairs of the partnership, and may advise as to its management; but he cannot transact any business on account of the partnership, nor be employed by it as agent, attorney or otherwise. If he act in contravention of the provisions of this article, he is deemed a general partner.

1885. The general partners are liable to account to each other and to the special partners for the management of

the business of the partnership, in the same manner as ordinary partners under a collective name.

1886. In case of the insolvency or bankruptcy of the partnership, no special partner is allowed, under any circumstances, to claim as a creditor, until the claims of all the other creditors of the partnership have been satisfied.

1887. No dissolution of the partnership by the acts of the parties can take place previously to the time specified in the certificate of its formation, or the certificate of its renewal, until notice of such dissolution has been filed and published in the manner provided in the act specified in article 1871.

1888. Partnerships for the business of banking are regulated by special acts of incorporation, and by the Federal act respecting banks and banking. — R. S. Q., 6241. — R. S. C., c. 120. — C. 367.

§ 4. OF JOINT-STOCK COMPANIES.

1889. Joint stock companies are formed either under the authority of a royal charter, or of an act of the legislature, and are governed by its provisions; or they are formed without such authority, and in the latter case, are subject to the same general rules as partnerships under a collective name. — C. 353, 371, 373*a*, 1892 § 10.

1890. The names of the partners or stockholders do not appear in joint-stock companies, which are generally known under an appellation indicating the object of their formation. The business is carried on by directors or other mandataries, who are appointed from time to time, according to the rules established for the governance of such companies respectively.

1891. Any seven or more persons may in like manner associate themselves together for the purpose of carrying on any labor, trade or business, except the working of mines, minerals or quarries, and the business of banking or insurance, in conformity with the provisions of the act of 1865, intituled *An act to authorize the formation of companies or cooperative associations for the purpose of carrying on, in common, any trade or business.*

The formation and governance of joint-stock companies and corporations for particular objects are provided for by special statutes.

CHAPTER FIFTH.

OF THE DISSOLUTION OF PARTNERSHIP.

1892. Partnership is dissolved:

1. By the efflux of time;
2. By the extinction or loss of the partnership property;
3. By the accomplishment of the business for which it was contracted;
4. By bankruptcy;
5. By the death of one of the partners;
6. By the interdiction, or bankruptcy of one of the partners; 6 Ed. VII., c. 38, s. 2.
7. By the will of one or more of the partners not to continue the partnership, according to articles 1895 and 1896;
8. By the business of the partnership becoming impossible or unlawful.

Limited partnerships are also determined by the causes declared in article 1879, to which article the causes of dissolution declared in the above paragraphs 5 and 6 are subjected.

The causes of dissolution declared in paragraphs 5, 6, 7, do not apply to joint-stock companies formed under the authority of a royal charter or of an act of the legislature. — N. 1865.

Commercial partnerships are also terminated by judgment maintaining, at the instance of a creditor of one of the partners, the seizure of such partner's share in the stock of partnership, or at the instance of one of the partners after such seizure. — 60 V., c. 50, s. 32. — P. 698.

1893. When one of the partners has promised to put in common the property in a thing, the loss of such thing before the contribution of it has been made, dissolves the partnership with respect to all the partners.

The partnership is equally dissolved by the loss of the thing when only the enjoyment of it is put in common, and the property of the thing remains with the partner.

But the partnership is not dissolved by the loss of the thing of which the property has already been brought into the partnership; unless such thing constitutes the whole capital stock of the partnership, or is so important a part of it that the business of the partnership cannot be carried on without it. — N. 1867.

1894. It may be stipulated that in case of the death of one of the partners, the partnership shall continue with his legal representative, or only between the surviving partners. In the latter case, the representative of the deceased partner is entitled to a division of the partnership property, only as it exists at the time of the partner's death. He cannot claim the benefit of any transaction subsequent thereto, unless such transaction is a necessary consequence of something done before the death occurred. — N. 1868.

1895. Those partnerships only which are not limited as to duration can be dissolved at the will of any one of the partners, by a notice to all the others of his renunciation. Such renunciation must be in good faith, and not made at a time unfavorable for the partnership. — N. 1869. — C. 1833.

1896. The dissolution of a partnership limited as to duration, may be demanded by one of the partners before the expiration of the stipulated term, upon just cause shown, or when another partner fails to fulfil his engagement, or is guilty of gross misconduct, or from habitual infirmity or physical impossibility is unable to attend to the business of the partnership, or when his condition and status are essentially changed, and in other cases of a like nature. — N. 1871. — C. 1841.

1896*a*. If a partnership be dissolved or a judicial demand be made for such dissolution, the court or the judge, upon the demand of one of the partners, after notice given to the others, has power to appoint one or more liquidators.

The liquidators so appointed must be sworn to well and faithfully perform the duties of their office.

They immediately give notice of their appointment by an advertisement to that effect published in the Quebec Official Gazette and in two newspapers, one in the French and the other in the English language, published at the place of business of the partnership or at the nearest place, and in such other manner as the court or judge may prescribe.

They become *pleno jure* seized of the assets of the partnership for the purposes of the liquidation; they furnish the security prescribed by the court or judge, and are in all respects subject to the summary jurisdiction of such court or judge.

They possess all the powers and are subject to all the obligations of judicial sequestrators, with the exception of the putting into possession, which is done without the intermediary of a bailiff.

Acts, exceeding those of administration, cannot be performed by the liquidators without the consent of all the partners, and, in default of such consent, only with the approval of the court or judge, after previous notice to the members of the partnership.

The remuneration of the liquidators is fixed by the court or judge.

Proceedings respecting the appointment of liquidators and the performance of the duties of their office are summary.

Provisional execution takes place notwithstanding the

appeal, saving the right of the court to which the cause is taken in appeal to summarily suspend such execution.

Two judges of the court seized of the appeal may also give such order for suspension after notice to the adverse party. — R. S. Q., 5822.

CHAPTER SIXTH.

OF THE EFFECTS OF DISSOLUTION.

1897. The mandate and powers of the partners to act for the partnership cease with its dissolution, except for such acts as are a necessary consequence of business already begun; nevertheless whatever is done in the usual course of dealing and business of the partnership, by a partner acting in good faith and in ignorance of the dissolution, binds the other partners, in the same manner as if the partnership still subsisted.

1898. Upon the dissolution of the partnership, each partner or his legal representative may demand of his copartners an account and partition of the property of the partnership; such partition to be made according to the rules relating to the partition of successions, in so far as they can be made to apply.

Nevertheless, in commercial partnerships these rules are to be applied only when they are consistent with the laws and usages specially applicable in commercial matters. — N. 1872. — C. 689 et s. — P. 1037 et s.

1899. The property of the partnership is to be applied to the payment of the creditors of the firm, in preference to the separate creditors of any partner; and in case such property be found insufficient for the purpose, the private property of the partners, or of any one of them is also to be applied to the payment of the debts of the partnership; but only after the payment out of it, of the separate creditors of such partners or partner respectively. — C. 1991.

1900. The dissolution of a partnership by the terms of the contract, or the voluntary act of the partners, or by the expiration of time, or by the death or retirement otherwise of a partner, does not affect the rights of third persons dealing afterwards with any of the partners on account of the partnership firm; except in the cases following:

1. When notice is given as required by law or the usage of trade;

2. When the partnership is limited to a particular enterprise or adventure which is terminated before the transaction takes place;

3. When the transaction is

not within the usual course of dealing and business of the partnership;

4. When the transaction is in bad faith or illegal, or otherwise void;

5. When the partner sought to be charged is a dormant or unknown partner, to whom no credit is actually given, and who has retired before the transaction takes place.

TITLE TWELFTH.

OF LIFE-RENTS.

CHAPTER FIRST.

GENERAL PROVISIONS.

1901. Life-rents may be constituted for valuable consideration; or gratuitously, by gift or will. — N. 1968, 1969. — C. 472.

1902. The rent may be upon the life of the person who constitutes it, or who receives it, or upon the life of a third person who has no right to the enjoyment of it. — N. 1971.

1903. It may be constituted upon one life or upon several lives.

But if it be for more than ninety-nine years or three successive lives, and affect real estate, it becomes extinct thereafter as provided in article 390. — N. 1972.

1904. It may be constituted for the benefit of a person other than the one who gives the consideration. — N. 1973.

1905. A life-rent constituted upon the life of a person who is dead at the time of the contract produces no effect, and the consideration paid for it may be recovered back. — N. 1974.

1906. [The rule declared in the last preceding article applies equally when the person upon whose life the rent is constituted is, without the knowledge of the parties, dangerously ill of a malady of which he dies within twenty days after the date of the contract.] — N. 1975.

CHAPTER SECOND.

OF THE EFFECTS OF THE CONTRACT.

1907. Non-payment of arrears of a life-rent is not a cause for recovering back the money or other consideration given for its constitution. — N. 1978.

1908. The creditor of a

life-rent secured by the privilege and hypothec of a vendor upon immoveable property, afterwards seized to be sold under execution, has a right to demand that the property shall be sold subject to the life-rent as a charge upon it. — C. 1593 et s. — P. 724.

1909. The debtor of the rent cannot free himself from the payment of it by offering to reimburse the capital and renouncing all claim to receive back the payments made. — N. 1979.

1910. The rent is due only for the number of days that the person upon whose life it is constituted lives; unless it is made payable in advance. — N. 1980. — C. 453.

1911. A stipulation that the life-rent cannot be seized or taken in execution is without effect, unless it is constituted by a gratuitous title. — N. 1981.

1912. The obligation to pay a life-rent continues during the natural life of the person upon whose life it is constituted; 6 Ed. VII., c. 38, s. 2. — N. 1982.

1913. The creditor of a life-rent on demanding payment of it must establish the existence of the person on whose life it is constituted, up to the time for which the arrears are claimed. — N. 1983.

1914. [When an immoveable hypothecated for the payment of a life-rent is sold by a forced sale or other proceeding having the same effect, or by a voluntary sale followed by confirmation of title, the posterior creditors are entitled to receive the proceeds of the sale on giving sufficient security for the continued payment of the rent, and in default of such security being given, the creditor of the rent is collocated, according to the order of his hypothec, for a sum equal to the value of the rent at the time of collocation.] — C. 394. — P. 803.

1915. [The value of a life-rent is estimated at the sum which, at the time of collocation, would be sufficient to purchase from a life-assurance company a life-annuity of like amount.]

1916. If the price of the immoveable be less than the estimated value of the life-rent the creditor of it is entitled to receive such price, according to the order of his hypothec, or security from the posterior creditors for the payment of the rent untill the price received by them and the interest is exhausted by such payments.

1917. The estimation of the life-rent and its payment, in all cases in which the creditor is entitled to claim the value of it, are subject to the rules contained in the foregoing articles in so far as they can be made to apply.

TITLE THIRTEENTH.

OF TRANSACTION.

1918. Transaction is a contract by which the parties terminate a lawsuit already begun, or prevent future litigation by means of concessions or reservations made by one or both of them. — N. 2044.

1919. Those persons only can enter into the contract of transaction who have legal capacity to dispose of the things which are the object of it. — N. 2045. — C. 307.

1920. Transaction has between the parties to it the authority of a final judgment, (*res judicata*). — N. 2052. — C. 1241.

1921. Error of law is not a cause for annulling transaction. With this exception, it may be annulled for the same causes as contracts generally; subject nevertheless to the provisions of the articles following. — N. 2053.

1922. Transaction may also be annulled when it is made in execution of a title which is null, unless the parties have expressly referred to and covered the nullity. — N. 2054.

1923. [Transaction upon a writing which has since been found to be false, is altogether null.] — N. 2055.

1924. Transaction upon a suit terminated by a judgment having the authority of a final judgment, and not known to either of the parties, is null. But if the judgment be appealable the transaction is valid. — N. 2056.

1925. When parties have transacted generally upon all the matters between them, the subsequent discovery of documents of which they were then in ignorance does not furnish a cause for annulling the transaction; unless such documents have been kept back by one of the parties.

But transaction is null when it relates only to an object respecting which the newly discovered documents prove that one of the parties had no right whatever. — N. 2057.

1926. Errors of calculation in transaction may be reformed. — N. 2058.

TITLE FOURTEENTH.

OF GAMING CONTRACTS AND BETS.

1927. There is no right of action for the recovery of money or any other thing claimed under a gaming contract or a bet. But if the money or thing have been paid by the losing party he cannot recover it back, unless fraud be proved. — N. 1965, 1967. — C. 1140.

1928. The denial of the right of action declared in the preceding article is subject to exception in favor of exercises for promoting skill in the use of arms, and of horse and foot races, and other lawful games which require bodily activity or address.

Nevertheless the court may in its discretion reject the action when the sum demanded appears to be excessive. — N. 1966.

TITLE FIFTEENTH.

OF SURETYSHIP.

CHAPTER FIRST.

OF THE NATURE, DIVISION, AND EXTENT OF SURETYSHIP.

1929. Suretyship is the act by which a person engages to fulfil the obligation of another in case of its non-fulfilment by the latter.

The person who contracts this engagement is called surety.

1930. Suretyship is either conventional, legal, or judicial. The first is the result of agreement between the parties, the second is required by law, and the third is ordered by judicial authority.

1931. The surety is not bound to fulfil the obligation of the debtor unless the latter fails to do so. — N. 2011.

1932. Suretyship can only be for the fulfilment of a valid obligation.

It may however be for the fulfilment of an obligation which is purely natural or

from which the principal debtor may free himself by means of an exception which is purely personal to himself; for example, in the case of minority. — N. 2012. — C. 1958.

1933. Suretyship cannot be contracted for a greater sum nor under more onerous conditions than the principal obligation.

It may be contracted for a part only of the debt, or under conditions less onerous.

The suretyship which exceeds the debt, or is contracted under more onerous conditions, is not null; it is only reducible to the measure of the principal obligation. — N. 2013.

1934. A person may become surety without the request and even without the knowledge of the party for whom he binds himself.

A person may become surety not only of the principal debtor but even of the surety of such debtor. — N. 2014.

1935. Suretyship is not presumed; it must be expressed, and cannot be extended beyond the limits within which it is contracted. — N. 2015. — C. 1611.

1936. Indefinite suretyship extends to all the accessories of the principal obligation, even to the costs of the principal action, and to all costs subsequent to notice of such action given to the surety. — N. 2016.

1937. The obligations of the surety pass to his heirs, except the liability to coercive imprisonment when the obligation of the surety was such that he would have been subject to it. — N. 2017. — P. 883 § 3.

1938. The debtor who is bound to find a surety must offer one who has the capacity of contracting, who has sufficient property in Lower Canada to answer the obligation, and whose domicile is within the limits of Canada. — N. 2018. — C. 1962. — P. 562.

1939. The solvency of a surety is estimated only with regard to his real property; except in commercial matters, or when the debt is small, and in cases otherwise provided for by some special law.

Litigious immoveables are not taken into account.—N. 2019. — P. 561, 910, 916, 1215, 1249.

1940. When the surety, in conventional or judicial suretyship, becomes insolvent, another must be found.

This rule admits of exception in the case only in which the surety was solely given in virtue of an agreement by which the creditor has required that a certain person should be the surety. — N. 2020. — P. 1221.

CHAPTER SECOND.

OF THE EFFECT OF SURETYSHIP.

SECTION I.

OF THE EFFECT OF SURETYSHIP BETWEEN THE CREDITOR AND THE SURETY.

1941. The surety is liable only upon the default of the debtor, who must previously be discussed, unless the surety has renounced the benefit of discussion, or has bound himself jointly and severally with the debtor, in which case his liability is governed by the rules established with respect to joint and several obligations. — N. 2021. — C. 1120, 1964, .1965.

1942. The creditor is not bound to discuss the principal debtor unless the surety demands it when he is first sued. — N. 2022.

1943. The surety who demands the discussion must point out to the creditor the property of the principal debtor and advance the money necessary to obtain the discussion.

He must not indicate property situated out of Lower Canada, nor litigious property, nor property hypothecated for the debt and no longer in the hands of the debtor. — N. 2023. — P. 177 § 5, 190.

1944. Whenever the surety has indicated property in the manner prescribed by the preceding article, and has advanced sufficient money for the discussion, the creditor is, to the extent of the value of the property indicated, responsible as regards the surety, for the insolvency of the principal debtor which occurs after his default to proceed against him. — N. 2024.

1945. When several persons become sureties of the same debtor for the same debt, each of them is bound for the whole debt. — N. 2025.

1946. Nevertheless each of them may, unless he has renounced the benefit of division, require the creditor to divide his action and reduce it to the share and proportion of each surety.

If, at the time that one of the sureties obtained judgment of division, some of them were insolvent, such surety is proportionately liable for their insolvency; but he cannot be made liable for insolvencies happening after the division. — N. 2026.

1947. If the creditor have himself voluntarily divided his action, he can no longer recede from such division, although at the time some of the sureties had become insolvent. — N. 2027.

SECTION II.

OF THE EFFECT OF SURETYSHIP BETWEEN THE DEBTOR AND THE SURETY.

1948. The surety, who has bound himself with the con-

sent of the debtor, may recover from him all that he has paid for him in principal, interest and costs, together with the costs incurred against him and those legally incurred by him in notifying the debtor and subsequently to such notification. He has also a claim for damages, if there be ground for it. — N. 2028.

1949. The surety, who has bound himself without the consent of the debtor, has no remedy for what he has paid beyond what the debtor would have been obliged to pay had the suretyship not been entered into, saving the costs subsequent to the notice of payment by the surety, which are borne by the debtor.

The surety has also his recourse for such damages as the debtor would have been liable for in the absence of such suretyship.

1950. The surety who has paid the debt is subrogated in all the rights which the creditor had against the debtor. — N. 2029. — C. 1156 § 3, 1959.

1951. When there are several principal debtors jointly and severally bound to the same obligation, the surety who has become answerable for all of them, has his remedy against each of them for the recovery of all that he has paid. — N. 2030.

1952. The surety who has paid first has no remedy against the principal debtor who has paid a second time without being notified of the first payment; saving his right to recover back from the creditor.

When the surety has paid before being sued and has not notified the principal debtor, he loses his remedy against such debtor if, at the time of the payment, the latter had the means of having the debt declared extinct; saving his right to recover back from the creditor. — N. 2031.

1953. The surety who has bound himself with the consent of the debtor may, even before paying, proceed against the latter to be indemnified:

1. When he is sued for the payment;

2. When the debtor becomes bankrupt or insolvent;

3. When the debtor has obliged himself to effect his discharge within a certain time;

4. When the debt becomes payable by the expiration of the stipulated term, without regard to the delay given by the creditor to the debtor without the consent of the surety;

5. After ten years, when the term of the principal obligation is not fixed, unless the principal obligation, such as that of a tutor, is of a nature not to be discharged before a determinate period. — N. 2032. — C. 1961.

1954. The rule contained in the last paragraph of the preceding article does not apply to sureties given by public officers, or other employees, in order to secure the fulfilment of the duties of their office; such sureties have a right at all times to free themselves from future liability under their suretyship by giving sufficient notice unless it has been otherwise agreed.

SECTION III.

OF THE EFFECT OF SURETYSHIP BETWEEN CO-SURETIES.

1955. When several persons become sureties for the same debtor and the same debt, the surety who discharges the debt has his remedy against the other sureties, each for an equal share.

But he can only exercise this remedy when his payment has been made in one of the cases specified in article 1953. — N. 2033.

CHAPTER THIRD.

OF THE EXTINCTION OF SURETYSHIP.

1956. Suretyship becomes extinct by the same causes as other obligations. — N. 2034. — C. 1179, 1185, 1186, 1191, 2228, 2229.

1957. The confusion which takes place in the person of the principal debtor or of his surety when one of them becomes heir of the other, does not destroy the action of the creditor against the surety of such surety. — N. 2035.

1958. The surety may set up against the creditor all the exceptions which belong to the principal debtor and are inherent to the debt; but he cannot set up exceptions that are purely personal to the debtor. — N. 2036. — C. 1932.

1959. The suretyship is at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor.— N. 2037.

1960. When the creditor voluntarily accepts an immoveable or any object whatever in payment of the principal debt, the surety is discharged, though such creditor should afterwards be evicted of it. — N. 2038.

1961. The surety who has become bound with the consent of the debtor is not discharged by the delay given to such debtor by the creditor. He may in the case of such delay sue the debtor in order to compel him to pay. — N. 2039. — C. 1953 § 4.

CHAPTER FOURTH.

OF LEGAL AND JUDICIAL SURETYSHIP.

1962. Whenever a person is required by law or by order

of a court to find a surety, he must conform to the conditions prescribed by articles 1938, 1939 and 1940.

In the case of judicial suretyship, the person offered must moreover not be exempt from civil imprisonment. — N. 2040. — C. 2034. — P. 559 et s., 883 § 3, 835.[1]

1963. When a person cannot find surety he may in lieu thereof deposit some sufficient pledge. — N. 2041.

1964. A judicial surety cannot demand the discussion of the principal debtor. — N. 2042.

1965. He who is simply surety of a judicial surety cannot demand the discussion of the principal debtor nor of the surety. — N. 2043.

TITLE SIXTEENTH.

OF PLEDGE.

1966. Pledge is a contract by which a thing is placed in the hands of a creditor, or, being already in his possession, is retained by him with the owner's consent, in security for his debt.

The thing may be given either by the debtor or by a third person in his behalf. — N. 2071, 2077.—C. 1740 et s.

1966*a*. Articles 1488, 1489 and 2268 apply to the contract of pledge. — R. S. Q., 5823.

CHAPTER FIRST.

OF THE PLEDGE OF IMMOVEABLES.

1967. Immoveables may be pledged upon such terms and conditions as may be agreed upon between the parties. If no special agreement be made, the fruits are imputed first in payment of interest upon the debt and afterwards upon the principal. If no interest made wholly upon the principal.

The pledge of immoveables is subject to the rules contained in the following chapter, in so far as they can be made to apply. — N. 2072, 2085.

CHAPTER SECOND.

OF PAWNING.

1968. The pledging of moveable property is called pawning. — N. 2072.

[1] V. 63 V., c. 44, authorizing guarantee companies to become judicial sureties.

1969. The pawn of a thing gives to the creditor a right to be paid from it by privilege and preference before other creditors. — N. 2073.— C. 1994 § 4, 2001.

1970. The privilege subsists only while the thing pawned remains in the hands of the creditor or of the person appointed by the parties to hold it. — N. 2076. — C. 1182.

1971. Saving pawnbrokers, no creditor can, in default of payment of the debt, dispose of the thing given in pawn. He may cause it to be seized and sold in the usual course of law under the authority of a competent court and obtain payment by preference out of the proceeds. This provision, however, does not apply to timber, which is pledged under the provisions of the act 29 V., c. 19,[1] nor to banks as regards goods and merchandise given in security, under the provisions of the law respecting banks and banking.

The creditor may also stipulate that in default of payment he shall be entitled to retain the thing. — R. S. Q., 6242. — R. S. C., cc. 120 and 128. — N. 2078.

1972. The debtor is owner of the thing pledged until it is sold or otherwise disposed of. It remains in the hands of the creditor only as a deposit to secure his debt. — N. 2079.

1973. The creditor is liable for the loss or deterioration of the thing pledged according to the rules established in the title *Of Obligations.*

On the other hand, the debtor is obliged to repay to the creditor the necessary expenses incurred by him in the preservation of the thing. — N. 2080.

1974. If a debt bearing interest be given in pledge, the interest is imputed by the creditor in payment of the interest due to him.

If the debt for the security of which the pledge is given do not bear interest, the imputation of the interest of the debt pledged is made upon the capital of the former. — N. 2081.

1975. The debtor cannot claim the restitution of the thing given in pledge, until he has wholly paid the debt in principal, interest and costs; unless the thing is abused by the creditor.

If another debt be contracted after the pledging of the thing and become due before that for which the pledge was given, the creditor is not obliged to restore the thing until both debts are paid. — N. 2082.

1976. The pledge is indivisible although the debt be divisible. The heir of the debtor who pays his portion of the debt cannot demand his portion of the thing pledged while any part of the debt remains due.

Nor can the heir of the

creditor who receives his portion of the debt restore the thing pledged to the injury of those of his coheirs who are not paid. — N. 2083.

1977. The rights of the creditor in the thing pledged to him are subject to those of third parties upon it, according to the provisions contained in the title *Of Privileges and Hypothecs.*

1978. The rules contained in this chapter, are subject in commercial matters to the laws and usages of commerce. — N. 2084.

1979. The special rules relating to the trade of pawnbroking are contained in the laws respecting pawn-brokers and pawn-broking.

The Federal acts respecting banks and banking, in so far as banks are concerned, and chapter 54 of the consolidated statutes of Canada, as respects private persons, contain special provisions for the transfer by endorsement of bills of lading, specifications of timber and receipts by warehousemen, millers, wharfingers, masters of vessels or carriers, to incorporated banks, or to private persons, as collateral security, and for the sale of the merchandise and effects represented by such instruments. — R. S. Q., 6243. — R. S. C., cc. 120 and 128. — N. 2084.[1]

TITLE SEVENTEENTH.

OF PRIVILEGES AND HYPOTHECS.

CHAPTER FIRST.

PRELIMINARY PROVISIONS.

1980. Whoever incurs a personal obligation, renders liable for its fulfilment all his property, moveable and immoveable, present and future, except such property as is specially declared to be exempt from seizure. — N. 2092. — P. 598, 599.

1981. The property of a debtor is the common pledge of his creditors, and where they claim together they share its price rateably, unless there are amongst them legal causes of preference. — N. 2093.

1982. The legal causes of

[1] V. R. S. Q., 5643 et s. containing special provisions governing the transfer by endorsement of bills of lading, timber specifications.

preference are privileges and hypothecs. — N. 2094.

CHAPTER SECOND.

OF PRIVILEGES.

GENERAL PROVISIONS.

1983. A privilege is a right which a creditor has of being preferred to other creditors according to the origin of his claim. It results from the law and is indivisible of its nature. — N. 2095.

1984. Among privileged creditors preference is regulated by the different qualities of the privileges, or the origin of the claims. — N. 2096.

1985. Privileged claims of equal rank are paid rateably. — N. 2097.

1986. Persons who are subrogated in the rights of a privileged creditor may exercise his right of preference. Such creditor has however a preference, for any remainder due him, over subrogated parties to whom he has not guaranteed the payment of the amount for which they have obtained subrogation.— C. 1154 et s., 2052, 2127.

1987. Persons who are merely subrogated by law in the rights of one and the same privileged creditor are paid rateably. — N. 2097.

1988. The transferees of different portions of a privileged claim are also paid rateably, if their respective transfers have been made without warranty of payment.

Those whose transfers were made with warranty of payment, are preferred to the others; as between themselves, however, regard is had to the date of the notice given of their respective transfers. — C. 1574, 2052, 2127.

1989. The crown has certain rights and privileges resulting from the laws relating to customs, and from other provisions contained in special statutes concerning matters of public administration. — N. 2098. — C. 2006*a*.

1990. The creditors and legatees of a deceased person who are entitled to separation of property, retain, against the creditors of his heirs and legatees, a right of preference and all their privileges upon such property of the succession as may be subject to their claims.

The same right of preference exists in the cases specified in articles 802 and 966. — N. 878, 2111. — C. 743, 879, 880, 2106.

1991. The rule as regards the creditors of a partnership and those of the partners individually, is declared in article 1898. — R. S. Q., 6244.

1992. Privileges may be upon moveable or upon immoveable property or upon both together. — N. 2099.

SECTION I.

OF PRIVILEGES UPON MOVEABLE PROPERTY.

1993. Privileges may be upon the whole of the moveable property, or upon certain moveable property only. — N. 2100.

1994. The claims which carry a privilege upon moveable property are the following, and where several of them come together they take precedence in the following order, and according to the rules hereinafter declared, unless some special law derogates therefrom:

1. Law costs and all expenses incurred in the interest of the mass of the creditors;

2. Tithes;

3. The claims of the vendor;

4. The claims of creditors who have a right of pledge or of retention;

5. Funeral expenses;

6. The expenses of the last illness;

7. Municipal taxes;

8. The claim of the lessor (in accordance with article 2005; R. S. Q., 5825);

8*a*. (The claim of the owner of a thing lent, leased, pledged or stolen, in accordance with article 2005*a*. 60 V., c. 50, s. 33);

9. Servants' wages (and those of employees of railway companies engaged in manual labor) and sums due for supplies of provisions.— 59 V., c. 41, s. 1;

10. The claims of the Crown against persons accountable for its moneys.

The privileges specified under the numbers 5, 6, 7, 9 and 10 extend to all the moveable property of the debtor, the others are special and affect only some particular objects. — R. S. Q., 5825. —. 2101, 2102.

1994*a*. Each person engaged to fish, or assist at any fishery, or in the dressing of fish, either by written agreement or otherwise, has, for securing his wages or share, a first lien preferable to any other creditor upon the produce of his employer's fishery. — R. S. Q., 5826.

1994*b*. Mutual fire insurance companies have a privilege upon the moveable property of the insured for the payment of assessments which may be imposed on the deposit notes of the members, which privilege takes rank immediately after municipal taxes and rates and remains in force for the same time. — *Id.*

1994*c*. Every person engaging himself to cut or manufacture timber, or to draw it out of the forest, or to float, raft or bring it down rivers and streams, has, for securing his wages or salary, a privilege, ranking with the claims of creditors who have a right of pledge or of retention, upon all the timber

belonging to the person for whom he worked, and, if he worked for a contractor, sub-contractor or foreman, upon all the timber belonging to the person in whose service such contractor, sub-contractor or foreman were, and which was cut, drawn or floated by such contractor, sub-contractor or foreman; but said privilege is extinguished as soon as the lumber shall have passed into the hands of a third person who has bought it, has received delivery thereof and has paid the price therefor in full. Such privilege in no wise affects that which the banks may acquire in virtue of the Banking Act. However, in the case in which the creditor has worked for a contractor or sub-contractor, such privilege shall not exist unless the person having a right thereto has given a written notice to the person affected by the exercise thereof and to the debtor or their agents or employees, of the amount due to him at each term of payment, as soon as possible, and such notice may be given by one creditor for and in the name of all the others who are unpaid.

2. In the event of a contestation between the creditor and the debtor respecting the amount due, the creditor shall, without delay, give written notice to the person affected by the exercise of such right, and the latter shall then retain the amount in dispute until he receives a written notification of an amicable settlement or of a judicial decision. — 57 V., c. 47, 62 V., c. 50. — C. 2001.

1995. Law costs are all those incurred for the seizure and sale of the moveable property and those of judicial proceedings for enabling the creditors generally to obtain payment of their claims. — N. 2101. — P. 676.

1996. The expenses incurred in the interest of the mass of the creditors, include such as have served for the preservation of their common pledge. — N. 2102.

1997. Tithes carry with them a privilege upon such crops as are subject to them.

1998. The unpaid vendor of a thing has two privileged rights:

1. A right to revendicate;

2. A right of preference upon its price.

In the case of insolvent traders these rights must be exercised within thirty days after the delivery. — R. S. Q., 5827, 54 V., c. 39, s. 2.— C. 1543. — P. 946 et s., 955 § 1.

1999. The right to revendicate is subject to four conditions:

1. The sale must not have been made on credit;

2. The thing must still be entire and in the same condition;

3. The thing must not have

passed into the hands of a third party who has paid for it;

4. It must be exercised within eight days after the delivery; saving the provision concerning insolvent traders contained in the last preceding article.

2000. If the thing be sold pending the proceedings in revendication, or if, when the thing is seized at the suit of a third party, the vendor be within the delay and the thing in the conditions prescribed for revendication, the vendor has a privilege upon the proceeds in preference to all other privileged creditors hereinafter mentioned.

If the thing be still in the same condition, but the vendor be no longer within the delay, or have given credit, he has a like privilege upon the proceeds, except as regards the lessor or the pledgee. — N. 2102.

2001. Creditors, having a right of pledge or of retention, rank according to the nature of their pledge or of their claim. The following is the order among them:

Carriers;

Hotel-keepers;

Mandataries or consignees;

Borrowers in loan for use;

Depositaries;

Pledgees;

Workmen upon things repaired by them, and persons having a privilege in virtue of article 1994*c*; as repealed.

Purchasers against whom the right of redemption is exercised, for the reimbursement of the price and the moneys laid out upon the property. — 60 V., c. 50, s. 34). This privilege cannot however be exercised, unless the right is still subsisting, or could have been claimed at the time of the seizure, if the thing have been sold. — N. 2102. — C. 441, 1546, 1679, 1713, 1723, 1770, 1812, 1816*a*, 1969.

2002. Privileged funeral expenses include only what is suitable to the station and means of the deceased, and are payable out of all his moveable property.

They include the mourning of the widow, within the same restriction. — N. 2101. — C. 2009 § 2.

2003. The expenses of the last illness include the charges of the physicians, apothecaries and nurses during the illness of which the debtor died, and are taken out of all the moveable property of the deceased.

[In cases of chronic disease, the privilege avails only for the expenses during the last six months before the decease.] — N. 2101. — C. 2009 § 3.

2004. The municipal taxes which rank before all other privileged claims hereinafter mentioned, are limited to taxes on persons and personal property imposed by certain municipalities, and

taxes to which a like privilege is attached by special statutes. — C. 2011 § 3.

2005. The privilege of the lessor extends to all rent that is due or to become due under a lease in authentic form.

But in the case of the liquidation of property abandoned by an insolvent trader who has made an abandonment in favor of his creditors, the lessor's privilege is restricted to twelve months rent due and the rent to become due during the current year if there remain more than four months to complete the year; and if there remain less than four months to complete the year, to the twelve months' rent due and to the rent of the current year and the whole of the following year.

If the lease be not in authentic form, the privilege can only be claimed for three overdue instalments and for the remainder of the current year. — 61 V., c. 46, s. 1. — C. 1619 et s.

2005*a*. The owner of a thing who has lent, leased or pledged it, and who has not prevented its sale, has a right to be paid the proceeds of its sale, after the claims mentioned in articles 1995 and 1996, and the claim of the lessor, have been collocated.

The same rule applies to the owner of a thing which has been stolen, who would not have lost his right to revendicate it, had it not been judicially sold. — 60 V., c. 50, s. 35.

2006. Domestic servants and hired persons are next entitled to be collocated by preference upon all the moveable property of the debtor for whatever wages may be due to them, for a period not exceeding [one year previous to the time of the seizure or of the death.]

Clerks, commercial travellers, apprentices and journeymen are entitled to the same preference, but only upon the merchandise and effects contained in the store, shop or workshop in which their services were required, [for a period of arrears not exceeding three months.]

(Employees of railway companies, engaged in manual labour, have also the same privilege upon all the moveable property of the company, for arrears not exceeding three months. — 59 V., c. 41, s. 2). — 9 Ed. VII., c. 71, s. 1.

Those who have supplied provisions have likewise a privilege, concurrently with domestic servants and hired persons, for the supplies furnished during the last twelve months. — N. 2101.

2006*a*. The privileges of the Crown are defined by special statutes. — 60 V., c. 50, s. 36. — N. 2098. — C. 1989.

2007. The privileges upon ships, upon their cargo and

their freight, are declared in the title *Of Merchant Shipping*. — C. 2383 et s.

2008. Other rules concerning the collocation of certain privileged claims, are to be found in the Code of Civil Procedure.

SECTION II.

OF PRIVILEGES UPON IMMOVEABLES.

2009. The privileged claims upon immoveables, are hereinafter enumerated and rank in the following order:

1. Law costs and the expenses incurred for the common interest of the creditors;

2. Funeral expenses, such as declared in article 2002, when the proceeds of the moveable property have proved insufficient to pay them;

3. The expenses of the last illness, such as declared in article 2003, and subject to the same restriction as funeral expenses;

4. The expenses of tilling and sowing;

5. Assessments and rates;

6. Seignioral dues;

7. The claim of the laborer, workman, architect, and builder, subject to the provisions of article 2013. — 59 V., c. 42, s. 1.

8. The claim of the vendor;

9. Servants' wages (and those of employees of railway companies engaged in manual labour under the same restriction as funeral expenses. — 59 V., c. 41, s. 3.) — N. 2103, 2104. — C. 2084, 2107. — P. 798.

2009*a*. Companies for stoning roads have a privilege upon the lands of all persons bound to the maintenance of the road and being shareholders to the amount of their contribution on account of such lands, and a privilege upon all lands belonging to persons not being shareholders bound to the maintenance of the road, for three years of arrears of commutation rent of such maintenance.

Notwithstanding the provisions of articles 2009 and 2015, these privileges rank immediately after municipal assessments.

A sale under execution shall not free the lands sold from the privilege of the company for the payment of instalments not yet due and of the annual rent to become due. — R. S. Q. 5829. — C. 2084 § 6.

2010. The privilege for expenses of tilling and sowing attaches upon the price of immoveables sold before the harvest is gathered, to the extent only of the additional value given by such tilling and sowing. — N. 2102. — C. 410.

2011. The assessments and rates which are privileged upon immoveables are:

1. Assessments for building

or repairing churches, parsonages or church-yards; but in cases where an immoveable has been purchased from a person who does not profess the Roman Catholic religion, before it was assessed for such purposes, the privilege for such assessment must rank after the vendor's claim, and all privileges and hypothecs anterior to such purchase;

2. School-rates;

3. Municipal rates, of which however only five years of arrears, besides the current year, can be claimed, without prejudice to cases under special statutes establishing a shorter prescription.

These claims are privileged only upon the immoveable specially assessed, and the last two rank concurrently after those mentioned in paragraph 1. — P. 790.

2012. The privilege for seignioral dues applies to all arrears of such dues, and extends equally to arrears of rents constituted in commutation of seignioral dues, for five years only, besides the current year. — P. 790.

2013. The laborer, workman, architect and builder have a right of preference over the vendor and other creditors, on the immoveable, but only upon the additional value given to the immoveable by the work done.

In case the proceeds are insufficient to pay the laborer, workman, architect and builder, or in cases of contestation, the additional value given by the work is established by a relative valuation effected in the manner prescribed in the Code of Civil Procedure.

The aforesaid privileged claim is paid only upon the amount established as being the additional value given to the immoveable by the work done. — 59 V., c. 42, § 2. — N. 2103. — C. 1695 et s., 2103. — P. 805 § 2, 806, 807.

2013*a*. For the purposes of the privilege, the laborer, workman, architect and builder rank as follows:

1. The laborer;
2. The workman;
3. The architect;
4. The builder. — 59 V., c. 42, s. 2.

2013*b*. The right of preference or privilege upon the immoveable exists, as follows:

Without registration of the claim, in favor of the debt due the laborer, workman and the builder, during the whole time they are occupied at the work or while such work lasts, as the case may be; and, with registration, provided it be registered within the thirty days following the date upon which the building has become ready for the purpose for which it is intended.

But such right of preference or privilege shall exist only for one year from the

date of the registration, unless a suit be taken in the interval, or unless a longer delay for payment has been stipulated in the contract.— — *Ibid.*

2013*c*. The preservation of the privilege is subject to the following conditions:

The laborer and workman must give notice in writing, or verbally before a witness, to the proprietor of the immoveable, that they have not been paid for their work, at and for each term of payment, due to them. Such notice may be given by one of the employees in the name of all the other laborers or workmen who are not paid, but in such case the notice must be in writing.

The architect and builder shall likewise inform the proprietor of the immoveable, or his agents, in writing, of the contracts which they have made with the chief contractor, within eight days from the signing of the same. — *Ibid.*

2013*d*. In order to meet the privileged claims of the laborer and workman, the proprietor of the immoveable may retain an amount equal to that which he has paid or will be called upon to pay, according to the notices he has received, so long as such claims remain unpaid. — *Ibid.*

2013*e*. In the event of a difference of opinion between the creditor and the debtor, with respect to the amount due, the creditor shall, without delay, inform the proprietor of the immoveable, by means of a written notice which shall also mention the name of the creditor, the name of the debtor, the amount claimed and the nature of the claim.

The proprietor then retains the amount in dispute until notified of an amicable settlement or a judicial decision. — *Ibid.*

2013*f*. The sale to a third party by the proprietor of the immoveable or his agents, or the payment of the whole or a portion of the contract price, cannot in any way affect the claims of persons who have a privilege under article 2013, and who have complied with the requirements of articles 2013*a*, 2013*b*, 2013*c* and 2013. — *Ibid.*

2013*g*. The supplier of materials shall, before delivery of the materials, give notice in writing to the proprietor of the immoveable, of the contracts made by him for the delivery of materials, and mention the cost thereof and the immoveable for which they are intended. — *Ibid.*

2013*h*. In order to meet the privileged claims of the suppliers of materials, the proprietor of the immoveable retains, on the contract price, an amount equal to

that mentioned in the notices he has received. — *Ibid.*

2013*i*. The notices mentioned in article 2013*g* have the effect of an attachment by garnishment on the contract price.

Within the three months following the notice given in accordance with article 2013*g*, the interested parties must take legal proceedings to have the debtor condemned and the seizure declared valid, otherwise the latter lapses; and, to such suit, the proprietor of the immoveable must be made a party. — *Ibid.* — P. 680.

2013*j*. In the event of the proprietor of the immoveable erecting the building himself without the intermediary of any contractor, the notices mentioned in article 2013*g* may be given to the person or persons who lend or may lend money to the person building, and thereupon the latter shall, *mutatis mutandis*, be subject to the provisions of the preceding articles. — 59 V., c. 42, s. 2.

2013*k*. No transfer of any portion of the contract price or of the amount borrowed, as the case may be, either before or during the execution of the work, can be set up against the said suppliers of materials; nor can any payment, exceeding the cost of the work done, according to a certificate of the architect or superintendent of the works, affect their rights. — *Ibid.*

2013*l*. On notice given to the proprietor in virtue of article 2013*g* and registered according to article 2103, the suppliers of materials shall have a hypothecary privilege which shall rank after the hypothecs previously registered and the privileges created by this act. — *Ibid.*

2014. The vendor has a privilege upon the immoveable sold for all the price due to him.

If there have been several successive sales, the prices of which are wholly or partly due, the first vendor is preferred to the second, the second to the third, and so on.

The same right extends:

To donors, for the payments and charges stipulated in their favor;

To copartitioners, coheirs and colegatees upon the immoveables which they owned in common, for the warranty of the partitions made between them and of the differences to be paid. — N. 2103. — C. 748 et s., 2050, 2100, 2104, 2105, 2122.

SECTION III.

HOW PRIVILEGES UPON IMMOVEABLES ARE RETAINED.

2015. With regard to immoveables, privileges produce no effect among credi-

tors, unless they are made public in the manner determined in the title *Of Registration of Real Rights*, saving the exceptions therein mentioned. — N. 2106.

CHAPTER THIRD.

OF HYPOTHECS.

SECTION I.

GENERAL PROVISIONS.

2016. Hypothec is a real right upon immoveables made liable for the fulfilment of an obligation, in virtue of which the creditor may cause them to be sold in the hands of whomsoever thay may be, and have a preference upon the proceeds of the sale in order of date as fixed by this code. — N. 2114, 2118.

2017. Hypothec is indivisible and subsists in entirety upon all the immoveables made liable, upon each of them and upon every portion thereof.

Hypothec extends over all subsequent improvements or increase by alluvion of the property hypothecated.

It secures besides the principal, whatever interest accrues therefrom, under the restrictions stated in the title *Of Registration of Real Rights*, and all costs incurred.

It is merely an accessory and subsists no longer than the claim or obligation which it secures. — N. 2114, 2133. — C. 2247. — P. 804.

2018. Hypothec can take place only in the cases and according to the formalities authorized by law. — N. 2115.

2019. Hypothec may be either legal, judicial, or conventional. — N. 2116.

2020. Legal hypothec is that which results from the law alone.

Judicial hypothec is that which results from judgments or judicial acts.

Conventional hypothec results from an agreement. — N. 2117.

2021. Hypothec upon an undivided portion of an immoveable can only subsist in so far as the debtor, by means of a partition or other equivalent act, remains proprietor of some portion of such immoveable, saving the provisions of article 731. — P. 746.

2022. Moveables are not susceptible of hypothecation; except as provided in the titles *Of Merchant Shipping* and *Of Bottomry* and *Respondentia*.—N. 2119, 2120.

2023. Hypothec cannot be acquired, to the prejudice of existing creditors, upon the immoveables of persons notoriously insolvent, or of traders within the thirty days previous to their bankruptcy. — C. 1032 et s., 2085, 2090.

SECTION II.

OF LEGAL HYPOTHEC.

2024. The only rights and claims to which legal hypothec is attached, under the restrictions hereinafter mentioned, are declared in paragraphs one, two, three and four of this section.

2025. Legal hypothec either affects all the immoveables generally, or is limited to some of them only.

2026. Legal hypothec affects such immoveables only as belong to the debtor and are described in a notice filed and registered, as prescribed in the title *Of Registration of Real Rights.* — C. 2133, 2147*a*.

2027. Creditors who acquired a legal hypothec before the thirty-first day of December, one thousand eight hundred and forty-one, may nevertheless exercise it upon all the immoveable property held by the debtor at or since the time of the acquisition of such hypothec.

2028. Legal hypothecs anterior to the first day of September, one thousand eight hundred and sixty, are governed by the laws in force when they were created.

§ 1. LEGAL HYPOTHEC OF MARRIED WOMEN.

2029. Married women have a legal hypothec for all claims or demands which they may have against their husbands on account of whatever they may have received or acquired during marriage by succession, inheritance or gift. — N. 2121, 2135. — C. 2115.

§ 2. LEGAL HYPOTHEC OF MINORS AND INTERDICTED PERSONS.

2030. Minors and interdicted persons have a legal hypothec upon the immoveables of their tutors or curators for the balance of the tutorship or curatorship account. — N. 2121. — C. 2117 et s.

2031. This hypothec takes place only in the case of tutorships or curatorships conferred in Lower Canada.

§ 3. LEGAL HYPOTHEC OF THE CROWN.

2032. The legal hypothec of the crown in cases where it exists, is, like legal hypothec in general, subject to the preliminary provisions of this section. — N. 2121.— C. 1989.

§ 4. LEGAL HYPOTHEC OF MUTUAL INSURANCE COMPANIES.

2033. There is likewise a legal hypothec in favor of mutual fire insurance companies upon the immoveables mentioned in the policy, for

the payment of the assessments upon the deposit notes.

This hypothec is not subject to the restrictions contained in article 2026, and it ranks dating from the date of the deposit note. — R. S. Q., 5830. — C. 2084 § 5, 2130.

SECTION III.

OF JUDICIAL HYPOTHEC.

2034. Judicial hypothec results from judgments rendered by the courts of Lower Canada, either in contested or uncontested cases, and which order the payment of a specific sum of money. Such judgments likewise carry hypothec for interest and costs without specifying the amount thereof, subject to the restrictions contained in the title *Of Registration of Real Rights.*

It also results from any act of suretyship judicially entered into, and from any other judicial act creating an obligation to pay a specific sum of money.

It is subject to the rules contained in article 2026. — N. 2123. — C. 2121.

2035. Judicial hypothecs acquired before the thirty-first day of December, one thousand eight hundred and forty-one, affect all the property held by the debtor at or since the time at which they were acquired.

2036. Judicial hypothecs acquired between the thirty-first day of December, one thousand eight hundred and forty-one, and the first day of September, one thousand eight hundred and sixty, affect only such property as the debtor possessed at the time when the judgment was rendered or the judicial act performed. — N. 2123.

Since the first day of September, one thousand eight hundred and sixty, and for the future, judicial hypothec may be exercised against all the immoveables possessed by the debtor and those which he may acquire. — 6 Ed. VII., c. 41, s. 1.

SECTION IV.

OF CONVENTIONAL HYPOTHEC.

2037. Conventional hypothec can only be granted by those who are capable of alienating the immoveables which they subject to it; saving the provisions of special enactments concerning *Fabriques.* — N. 2124.

2038. Persons whose right to an immoveable is suspended by a condition, or is determinable in certain cases, or is subject to rescission, can only grant hypothecs upon it which are subject to the same conditions or to the same rescission. — N. 2125. — C. 2081 § 2.

2039. The property of minors and interdicted persons, and that of absentees so

long as it is only provisionally held, cannot be hypothecated otherwise than in virtue of judgments, or for the causes and subject to the formalities established by law. — N. 2126. — C. 297, 298, 321, 351.

2040. Conventional hypothec cannot be granted otherwise than by acts in authentic form; except in the cases specified in the following article. — N. 2127.

2041. Hypothecs upon lands held in free and common soccage, and those upon lands in the counties of Missisquoi, Shefford, Stanstead, Sherbrooke and Drummond, whatever may be their tenure, may also be created in the form specified fifty-eighth section of chapter thirty-seven of the consolidated statutes for Lower Canada.

2042. Conventional hypothecs are not valid unless the deed specially describes the immoveable hypothecated, with a designation of the coterminous lands, or of the number or name under which it is known, or of the lot or part of the lot and range, or of its number upon the plan and book of reference of the registry office, if such plan and book of reference exist. — N. 2129. — C. 2168. — R. S. Q., 5831.

2043. A hypothec granted by a debtor upon an immoveable of which he has possession as proprietor, but under an insufficient title, takes effect from the date of its registration if he subsequently obtain a perfect title to it; saving the rights of third parties.

The same rule applies to judgments rendered against a debtor under the same circumstances.

2044. Conventional hypothecs are likewise not valid unless the sum for which they are granted is certain and determined by the deed.

This provision does not extend to life rents or other obligations appreciable in money, which are stipulated in gifts *inter vivos*. — N. 2132.

2045. Hypothecs created by a will upon immoveables subjected by the testator to certain charges, are governed by the same rules as conventional hypothecs. — C. 2110 et s.

2046. Conventional hypothecs may be granted for any obligation whatever.

SECTION V.

OF THE ORDER IN WHICH HYPOTHECS RANK.

2047. [As between the creditors, hypothecs heretofore created rank in the order of their respective dates, when none of them have been registered in conformity with the provisions contained in the title *Of Registration of Real Rights*. Hypothecs created hereafter

are without effect unless they conform to the provisions of article 2130.] — N. 2134.

2048. The creditor who expressly or tacitly consents to the hypothecation in favor of another of the immoveable hypothecated to himself is deemed to have ceded to the latter his preference; and in such case an inversion of order takes place between these creditors to the extent of their respective claims; but in such manner as not to prejudice intermediate creditors if there be any.

2049. A creditor who has a hypothec upon more than one immoveable belonging to his debtor may exercise it upon such one or more of them as he deems proper.

If however all or more than one of the immoveables thus hypothecated be sold, and the proceeds have to be distributed, his hypothec is divided rateably upon so much of their respective prices as remains to be distributed, when there are other subsequent creditors holding hypothecs upon some one or other only of such immoveables.

2050. The privileged or hypothecary creditors of a vendor rank before him, regard being had among them to the order of preference or priority.

2051. Creditors whose claims are suspended by a condition are nevertheless collocated in their order, subject however to the conditions prescribed in the Code of Civil Procedure. — P. 800.

2052. The provisions concerning privileges contained in articles 1986, 1987 and 1988 are also applicable to hypothecs.

CHAPTER FOURTH.

OF THE EFFECT OF PRIVILEGES AND HYPOTHECS WITH REGARD TO THE DEBTOR OR OTHER HOLDER.

2053. Hypothecs do not divest the debtor or other holder, either of whom continues to enjoy the property and may alienate it, subject however to the privilege or the hypothec charged upon it.

2054. Neither the debtor nor other holder can, with a view of defrauding the creditor, deteriorate the immoveable charged with a privileged or hypothecary claim, by destroying or injuring, carrying away or selling the whole or any part of the buildings, fences, or timber thereon.— P. 833 § 5.

2055. In the event of such deterioration the creditor who has a privilege or hypothec upon the immoveable may sue him, even though the claim be not yet payable, and recover from him personally the damages occasioned by such deteriorations, to the extent of such claim and with the same

right of privilege or hypothec; but the amount so recovered goes in reduction of the claim. — N. 2175. — P. 833 § 5.

2056. Creditors having a registered privilege or hypothec upon an immoveable may follow it into whatever hands it passes and cause it to be sold judicially in order to be paid, according to the order of their claims, out of the proceeds of such sale. — N. 2166.

2057. In order to secure his right, the creditor has two remedies, namely, the hypothecary action and the action to interrupt prescription. The latter is treated of in the title *Of Prescription*. — C. 2257.

SECTION I.

OF THE HYPOTHECARY ACTION.

2058. The hypothecary action is given to creditors whose claims are liquidated and exigible, against all persons holding as proprietors the whole or any portion of the immoveable hypothecated for their claim. — C. 2247.— P. 1025 et s.

2059. When the property is in the possession of an usufructuary the action must be brought against the proprietor of the land and against the usufructuary conjointly, or notice of it must be given to whichever of the two has not been sued in the first instance.

2060. If the possessor be charged with a substitution, judgment may be obtained against him in an hypothecary action without calling in the substitute; saving in such case the right of the latter as declared in the title concerning gifts.

2061. The object of the hypothecary action is to have the holder of the immoveable condemned to surrender it, in order that it may be judicially sold, unless he prefers to pay the debt in principal, interest as secured by registration, and costs.

If the claim be for a rent the holder in order to avoid surrendering must pay the arrears and costs, and consent to continue the payments either by a renewal deed or by a declaration to that end which the judgment to be pronounced renders effective.

2062. The holder against whom an action is brought for the enforcement or for the recognition of a hypothec has a right to call in his vendor, or any previous grantor bound to warrant the property against such claim, in order that he be condemned to intervene and repel the action or to indemnify such holder against the condemnation and any damages that may result therefrom. — N. 2178. — P. 187.

2063. For this purpose the

holder who is sued may set up a dilatory exception to the demand, as explained in the Code of Civil Procedure. — P. 177 § 4, 183.

2064. The holder may set up against the demand all grounds of defence whatever tending to its dismissal, whether the party bound to warrant the property has been called in or not.

2065. The holder against whom the hypothecary action is brought, and who is neither charged with the hypothec nor personally liable for the payment of the debt, may, besides the grounds of defence tending to destroy the hypothec, set up any of the exceptions set forth in the five following paragraphs, if there be grounds for them.

§ 1. OF THE EXCEPTION OF DISCUSSION.

2066. If the person who granted the hypothec or those who are personally liable for the payment of the debt possess property, the holder against whom the hypothecary action is brought may, before he can be called upon to surrender, require the creditor to sell the property belonging to the debtors personally bound, provided he indicates such property and advances the money necessary to obtain its discussion. — N. 2170. — P. 177 § 5, 190.

2067. This exception however cannot be set up in respect of immoveables hypothecated for the payment of a rent created for the price of the land.

§ 2. OF THE EXCEPTION OF WARRANTY.

2068. The holder may repel the hypothecary action, or the action for the recognition of a hypothec, brought against him, when the prosecuting creditor is in any way whatever personally bound to warrant the immoveable against such hypothec.

2069. This exception of warranty is equally available if the prosecuting creditor be himself the holder of another immoveable bound for the warranty of the defendant against the hypothec sued upon; the creditor in such case cannot maintain his action unless he previously surrenders the property which he thus holds.

§ 3. OF THE EXCEPTION OF SUBROGATION (cedendarum actionum.)

2070. The holder who is sued has a right to be subrogated in the rights and claims of the prosecuting creditor against all other persons liable for the payment whether personally or hypothecarily. — C. 1156.

2071. If the prosecuting

creditor or those from whom he derives his claim, have destroyed any right or recourse which the holder might otherwise have exercised in order to be indemnified against the condemnation sought for, or have by their own act become unable to transfer the same to him, the action in so far cannot be maintained.

§ 4. OF THE EXCEPTION RESULTING FROM EXPENDITURES.

2072. The holder against whom the hypothecary action is brought may also demand that the surrender which he may be ordered to make, be subject to his privilege of being paid what has been expended upon the immoveable, either by himself or by such of the persons from whom he derives his claim as are not personally bound to the payment of the hypothecary debt, the whole in conformity with the rules contained in the title *Of Ownership*, and with interest from the day when such expenditures were liquidated. — N. 2175. — C. 419.

§ 5. OF THE EXCEPTION RESULTING FROM A PRIVILEGED CLAIM OR A PRIOR HYPOTHEC.

2073. The holder who has received the immoveable in payment of a privileged debt or of an hypothecary claim prior to that brought against him, or who has paid a prior hypothecary claim, has a right, before being compelled to surrender, to obtain from the party suing him security that the immoveable will bring a sufficient price to ensure the payment of his privileged or prior claim. — C. 1156.

SECTION II.

OF THE EFFECT OF THE HYPOTHECARY ACTION.

2074. The alienation of an immoveable by the holder against whom the hypothecary action is brought, is of no effect against the creditor bringing the action, unless the purchaser deposits the amount of the debt, interest and costs due to such creditor.

2075. The holder against whom the hypothecary action is brought may surrender the immoveable before judgment. If he do not, he may be condemned to surrender it within the usual delay or the period fixed by the court, and in default thereof to pay the plaintiff the full amount of his claim.

The immoveable must be surrendered in the condition in which it then is, subject to the provisions contained in articles 2054 and 2055. — N. 2172, 2173. — C. 798, 799.

2076. The holder may be

condemned personally to pay the rents, issues and profits which he has received since the service of process, and any damages he may have caused to the immoveable since that time. — N. 2175, 2176.

2077. The surrender and sale are effected in the manner prescribed in the Code of Civil Procedure. — N. 2174. — P. 580 et s.

2078. Servitudes or real rights which the holder had upon the immoveable at the time of his acquisition of it, or which he extinguished during his possession of it revive after the surrender.

Such rights likewise revive in favor of the purchaser when, upon a demand for confirmation of title, he is obliged to deposit the purchase money in order to discharge hypothecs, or becomes evicted by an outbidder. — N. 2177. — C. 2081 § 3.

2079. The holder surrenders only the occupation and possession of the immoveable, he retains the ownership until the adjudication, and he may at any time before such adjudication stop the effect of the hypothecary judgment and of the surrender, by paying and depositing the full amount of the plaintiff's claim and all costs. — N. 2173.

2080. Persons bound to warrant the property may likewise, upon paying the hypothecary debt or procuring the extinction of the hypothec, stop the effect of the surrender and have it declared inoperative upon petition or application to the court in which such surrender was made.

CHAPTER FIFTH.

OF THE EXTINCTION OF PRIVILEGES AND HYPOTHECS.

2081. Privileges and hypothecs become extinct:

1. By the total loss of the thing subject to the privilege or hypothec; by the changing of its nature; by its ceasing to be an object of commerce, saving certain exceptional cases;

2. By the determination or legal extinction of the conditional or precarious right of the person who granted the privilege or the hypothec;

3. By the confusion of the qualities of privileged or hypothecary creditor and purchaser of the thing charged. Nevertheless if the creditor who has become purchaser be evicted for a cause which is not attributable to himself, the hypothec or the privilege revives;

4. By the express or tacit remission of the privilege or hypothec;

5. By the complete extinction of the debt to which the privilege or hypothec is attached, and also in the case provided in article 1197;

6. By sheriff's sale, or other sale of like effect, or by forced licitation, saving seigniorial rights and the rents constituted in their stead; and also by expropriation for public purposes, the creditors in such case retaining their recourse upon the price of the property;

7. By judgment of confirmation of title, as provided in the Code of Civil Procedure;

8. By prescription. — N. 2180. — C. 1590, 2038, 2157, 2247. — P. 781, 1054, 1084.

TITLE EIGHTEENTH.

OF REGISTRATION OF REAL RIGHTS.

CHAPTER FIRST.

GENERAL PROVISIONS.

2082. Registration gives effect to real rights and establishes their order of priority according to the provisions contained in this title. — N. 2106, 2134.

2083. All real rights subject to be registered take effect from the moment of their registration against creditors whose rights have been registered subsequently or not at all. If however a delay be allowed for the registration of a title and it be registered within such delay, such title takes effect even against subsequent creditors who have obtained priority of registration. — N. 2106, 2134.

2084. The following rights are exempt from the formality of registration:

1. The privileges mentioned in paragraphs one, four, five, six and nine of article 2009;

2. The original titles by which lands were granted *en fief, en censive, en franc-alleu,* or in free and common soccage;

3. Hypothecs in favor of the Crown, created in virtue of the statute to relieve the sufferers by fire at Quebec. 9th Victoria, chapter 62;

4. Seigniorial rights, and the rents constituted in their stead;

5. The claims of mutual insurance companies for the amount which the parties insured are liable to contribute;

6. The claims of companies for stoning roads against their members and those bound to the maintenance of such roads. — R.

S. Q., 5832. — N. 2107. — C. 2009*a*, 2033.

2085. The notice received or knowledge acquired of an unregistered right belonging to a third party and subject to registration, cannot prejudice the rights of a subsequent purchaser for valuable consideration whose title is duly registered, except when such title is derived from an insolvent trader. — N. 1071.

2086. Want of registration may be invoked against minors, interdicted persons, married women, and the Crown.

2087. Registration may be demanded by minors, interdicted persons, or married women, themselves, or by any person whatever in their behalf. — N. 2139. — C. 2147*b*.

2088. The registration of a real right cannot prejudice the purchaser of an immoveable who at the time [and before the coming into force of this code] was in open and public possession of it as owner, even though his title be not registered until afterwards.

2089. The preference which results from the prior registration of the deed of conveyance of an immoveable obtains only between purchasers who derive their respective titles from the same person.

2090. The registration of a title conferring real rights in or upon the immoveable property of a person, made within the thirty days previous to his bankruptcy, is without effect; saving the case in which the delay given for the registration of such title, as mentioned in the following chapter, has not yet expired. — N. 2146.

2091. The same rule applies to the registration effected after the seizure of an immoveable, when such seizure is followed by judicial expropriation. — N. 2146. — P. 715.

2092. The registration of real rights must be made at the registry office for the division in which the immoveable affected is either wholly or partly situated. — N. 2146.

2093. Registration avails in favor of all parties whose rights are mentioned in the document presented for that purpose.

2094. Privileged claims not registered take effect, as regards other unregistered claims, according to their rank or their date, and are preferred to simple chirographic claims; saving the exceptions contained in articles 2090 and 2091. — N. 2113.

2095. Registration does not interrupt prescription. — N. 2180.

2096. Other provisions concerning registration, both as regards real rights and moveable property and rights, are contained in several other titles of this code.

2097. The effects of registration or of non-registra-

tion in respect of deeds and judgments and other real rights anterior to the different statutes concerning registration are governed by special provisions of law contained in such statutes.

CHAPTER SECOND.

RULES PARTICULAR TO DIFFERENT TITLES BY WHICH REAL RIGHTS ARE ACQUIRED.

2098. All acts *inter vivos*, conveying the ownership of an immoveable must be registered at length, or by memorial.

In default of such registration, the title of conveyance cannot be invoked against any third party who has purchased the same property from the same vendor for a valuable consideration and whose title is registered.

Registration has the same effect between two donees of the same immoveable.

Every conveyance by will of an immoveable must be registered either at length or by memorial, [with a declaration of the date of the death of the testator,] and a description of the immoveable.

[The transmission of immoveables by succession must be registered by means of a declaration setting forth the name of the heir, his degree of relationship to the deceased, the name of the latter, the date of his death, and the designation of the immoveable.]

[So long as the right of the acquirer has not been registered, the registration of all conveyances, transfers, hypothecs or real rights granted by him in respect of such immoveable is without effect.] — R. S. Q., art. 5833. — C. 2147*a*, 2147*b*.

2099. Notwithstanding the provisions hereinabove contained, the sale, lease, or transfer of a mining right, if the title be authentic, is preserved and takes effect from its date by means of its registration within sixty days after its date, even though such act be not followed by actual possession.

2100. Persons conveying immoveables by sale, gift or exchange preserve all their rights and privileges by registering the deed of alienation within thirty days from its date, even against persons registering their rights between the dates of such deed and of its registration.

[The right of the vendor to take back an immoveable sold, in the case of non-payment of the price, does not affect subsequent purchasers who have not subjected themselves to such right, unless the deed in which it is stipulated has been registered as in ordinary cases; nevertheless the vendor in this matter as well as for securing the price has all the

advantage of the delay of thirty days.]

2101. [All judgments declaring the dissolution, nullity, or rescission of a registered deed of conveyance or other title by which an immoveable has been transmitted, or permitting the exercise of a right of redemption or of revocation, must be registered at length within thirty days after they are rendered.]

2102. [The action of the vendor to have the sale dissolved by reason of the non-payment of the price, according to article 1536, cannot be brought against third parties, if the stipulation to that effect have not been registered.

The same rule applies to the right of redemption.] — 1038, 2023.

2103. Vide 294*a*.

1. The privilege of the persons mentioned in article 2013 dates, in the cases mentioned in the first clause of article 2013*b*, only from the registration within the proper delay, at the registry office of the division in which is situated the immoveable affected by the inscription, of a notice or memorial, drawn up according to form *A*, with a deposition of the creditor, sworn to before a justice of the peace or a commissioner of the Superior Court, setting forth the nature and the amount of the claim and describing the immoveable so affected.

2. In registering such memorial, it is sufficient to mention, opposite the official number of the cadastre which describes the immoveable, if the cadastre be deposited, or opposite the title of the registered deed, if the cadastre be not yet deposited, the name of the claimant and the amount due at the time the memorial is filed.

3. The memorial shall be made out in duplicate, one copy of which shall remain in the archives of the registry office and the other be delivered to the creditor with the registrar's certificate thereon.

4. The creditor shall, within three days from the registration of the memorial, give a written notice to the proprietor of the immoveable, or to his agents, if he cannot be found. — 59 V., c. 42, s. 3. — N. 2110. — C. 1695.

2103*a*. Replaced by 59 V., c. 42, s. 3.

2104. The privilege of copartitioners, as well for the payment of differences as for the other rights resulting from partition, is preserved by the registration of the deed of partition within thirty days from its date. — N. 2109. — C. 2014.

2105. The same delay is allowed coheirs and colegatees for the registration of the

59 Vict 42 s.

rights and privileges accruing to them under acts or judgments of licitation. — C. 2014.

2106. Creditors and legatees claiming separation of property preserve a right of preference upon the estate of their deceased debtor, against the creditors of the heirs or legal representatives of the latter, provided they register within six months after the death of their debtor the rights which they have against his succession.

Such registration is effected by means of a notice or memorial specifying the nature and amount of their claims and describing any immoveables affected thereby. — N. 2111. — C. 743, 879, 880, 1990, 2133, 2147*a*.

2107 [Claims for funeral expenses and expenses of last illness do not retain their privilege upon immoveables unless a memorial of such claims is registered in the manner and within the delay prescribed by the preceding article.]—C. 2009, § § 2 et 3, 2147*a*.

2108. Fiduciary substitutions in respect of immoveables contained in deeds of gift *inter vivos* are subject to the general rules mentioned in article 2098 as regards third parties whose real rights upon such immoveables have been registered.

As regards all other interested parties the registration of substitutions, takes effect according to the provisions contained in the title concerning gifts. — N.1069. — C. 938 et s., 981.

2109. If the substitution be created by will, it is subject as regards registration to the provisions hereinafter declared with respect to wills.

2110. All rights of ownership resulting from wills, and all special hypothecs therein declared, are preserved and take their full effect by means of their registration within six months from the death of the testator, if he die within the limits of Canada, or within three years from such decease, if it occur beyond such limits. — N. 1000.—C. 880, 2045, 2098.

2111. In the case of the concealment, suppression or contestation of a will, or of any other difficulty, parties interested, who, without negligence or participation on their part, are disabled from effecting its registration within the delay prescribed by the preceding article, may nevertheless preserve their right by registering within the same delay a statement of such contestation or other impediment, and registering the will within six months after it or its probate has been obtained, or after the removal of the impediment. — C. 2147*a*.

2112. Nevertehless the reg-

istration of the statement mentioned in the preceding article has no retroactive effect unless the will be registered within five years from the death of the testator.

2113. Married men of full age are bound to register, without delay, the hypothecs and incumbrances to which their immoveables are subject in favor of their wives, on pain of punishment as for misdemeanor and of being liable for all damages. — N. 2136.

2114. If the married man be a minor, his father, mother, or tutor, who consented to his marriage, is bound to effect the registration mentioned in the preceding article, on pain of being held liable for all damages in favor of the wife.

2115. The legal hypothec of the wife affects the immoveables of her husband by means only of the registration of her debt, right or claim, and such immoveables only as are described and specified in a notice for that purpose, registered either at the same time as the right claimed, or at any time afterwards; and the hypothec dates only from such last mentioned registration. — C. 2029, 2133, 2147*a*.

2116. [The right to legal customary dower, cannot be preserved otherwise than by the registration of the marriage certificate with a description of the immoveables then subject to such dower.

As regards immoveables which may subsequently fall to the husband and become subject to customary dower, the right to dower upon such immoveables does not take effect until a declaration for that purpose has been registered, setting forth the date of the marriage, the names of the consorts, the description of the immoveable, its liability for dower and how it has become subject to it.] — C. 2133, 2147*a*.

2116*a*. In default of registration, no real, discontinuous and unapparent servitude, constituted by title, has any effect as regards third parties who become subsequent proprietors or creditors, whose rights have been registered. — R. S. Q., 5834. — C. 547, 548.

2117. Tutors to minors, and curators to interdicted persons are bound to register, without delay, the hypothecs to which their real estate is subject in favor of such minors or interdicted persons, under the pains hereinabove declared against married men in article 2113. — N. 2136, 2141. — C. 2030, 2031.

2118. Subrogate tutors are bound to see that the registration required in favor of the minor is effected, and if they fail to do so are liable

for all consequent damages that may be sustained by such minor. — N. 2137. — C. 267.

2119. [Every notary called upon to make an inventory is bound to see that the tutorships of the minors, or the curatorships of the interdicted persons interested in such inventories are duly registered, and, if necessary, to cause such registration to be effected at the expense of such tutors or curators, before proceeding with the inventory, on pain of all damages.]

2120. The hypothec of minors against their tutor or of interdicted persons against their curator affects such immoveables only as are described and specified in the act of tutorship or curatorship, and, in default of such description, such immoveables as are described in a notice for that purpose registered either at the same time as the appointment of the tutor or afterwards; and the hypothec dates only from such registration. — C. 2133, 2147*a*.

2121. The judgments and judicial acts of the civil courts confer hypothecs when they are registered, from the date only of the registration of a notice specifying and describing the immoveables of the debtor upon which the creditor intends to exercise his hypothec.

The same rule applies to all claims of the crown to which any tacit hypothec or privilege is attached by law. — N. 2123. — C. 2034 et s., 2133, 2147*a*.

2122. Registration of a deed of sale secures to the vendor in the same order of preference as for the principal, the interest for five years generally and that which is due upon the current year. — N. 2151.

2123. Registration of a deed constituting a life-rent or other rent preserves a preference for the arrears of five years generally and for those which are due upon the current year. — P. 804.

2124. Registration of any other claim preserves the same right of preference for the interest of only two years generally and for such interest as is due upon the current year. — N. 2151.

2125. The creditor has a hypothec for the remainder of the arrears of interest or of rent from the date only of the registration of a claim or memorial specifying the amount of arrears due and claimed.

Nevertheless the arrears of interest due at the time of the first registration and therein specified are preserved by such registration. — N. 2151. — C. 2146, 2147*a*.

2126. [Renunciations of dower, of successions, of legacies, or of community of property cannot be invoked against third parties, un-

less they have been registered in the registry office of the division in which the right accrued.]

2127. [Every conveyance or transfer, whether voluntary or judicial, of a privileged or hypothecary claim must be registered in the registry office in which the title creating the debt has been registered.

A duplicate of the certificate of its registration must be furnished to the debtor together with the copy of the transfer.

If these formalities be not observed the conveyance or transfer is without effect against subsequent transferees who have conformed to the above requirements.

All subrogations in such rights granted by authentic deeds or by private writings must likewise be registered and notice thereof be given. If the subrogation take place by the sole operation of law, it may be registered by transcribing the document from which it results, with a declaration to that effect.

The transfer or subrogation must be mentioned in the margin of the registry of the title creating the debt, with a reference to the number of the entry of such transfer or subrogation.] — C. 1154 et s., 1574, 1986 et s., 2052.

2128. [The lease of an immoveable for a period exceeding one year cannot be invoked against a subsequent purchaser unless it has been registered.] — C. 1663.

2129. [No act containing a discharge from the rent of an immoveable for more than one year in anticipation, can be invoked against a subsequent purchaser unless it has been registered, together with a description of the immoveable.]

CHAPTER THIRD.

OF THE ORDER OF PREFERENCE OF REAL RIGHTS.

2130. Privileged rights which are not subject to registration take precedence according to their respective rank.

Rights subject to registration and which have been registered within the prescribed delays, take effect according to the provisions contained in the preceding chapter.

Except the above cases and the case of articles 2088 and 2094, real rights rank according to the date of their registration.

If however two titles creating hypothec be entered for registration on the same day and at the same hour they rank together.

If a deed of purchase, and a deed creating a hypothec, both affecting the same immoveable, be entered at the same time, the more ancient deed takes precedence.

[No hypothec has any effect without registration, except that of mutual insurance companies for the amount which the parties insured are liable to contribute.] — N. 2134, 2147. — C. 2033, 2047.

CHAPTER FOURTH.

OF THE MODE AND FORMALITIES OF REGISTRATION.

2131. Registration is effected at length or by memorial.

It may from time to time, without however interrupting prescription, be renewed upon the demand of the creditor or his assigns or of any other person interested or entitled to demand registration. The renewal is made by transcribing, in a register kept for that purpose, a notice to the registrar designating the document, the date of its original registration, the immoveable affected and the person who is then in possesssion of it; and the volume and page in which the notice of renewal is registered must be referred to in the margin of the original registration.

If the title were originally registered in another registration division and a copy thereof have not been transmitted to the registry office of the new division, such renewal must mention the place where the title has been so registered.

An index must be kept for the books used for the registration of notices of renewal, and each notice is entered in the index both under the names of the creditor and of the debtor and under that of the owner of the immoveable as given in the notice.—C. 2147*a*, 2147*b*.

SECTION I.

OF REGISTRATION AT LENGTH.

2132. Registration at length is effected by transcribing on the register the title or documents which creates or gives rise to the rise, or an extract from such title made and certified according to the provisions of article 1216.

Errors of omission and commission in the registration at length of any document or in the document presented for registration do not affect the validity of such registration unless they occur in some material provision which should be noticed in a memorial or in a registrar's certificate.

2133. The notices mentioned in articles 2026, 2106, 2115, 2116, 2120 and 2121 must be registered at length.

2134. Registration at length of an authentic deed may be obtained upon the

production of a copy or extract thereof certified by the notary, if he have kept the original of record, or of the original itself, if it have been delivered by the notary.

If the title be a private writing it must be proved in the manner hereinafter prescribed with respect to memorials.

2135. The certificate of registration at length is written upon the document itself and mentions the day and hour at which it was entered, and the book and page in which it has been so registered, with the number under which it was so entered and registered.

SECTION II.

OF REGISTRATION BY MEMORIAL.

2136. Registration by memorial is effected by means of a summary setting forth the real rights which the party interested wishes to preserve, which is delivered to the registrar and transcribed upon the register. — N. 2148.

2137. The memorial must be in writing and may be made at the request of any party interested in or bound to effect the registration, and must be attested by two subscribing witnesses.

The memorial may also be made according to article 2144*a*.

The party requiring the memorial must subscribe his name to it, and, if he cannot write, his name may be subscribed by another, provided it be accompanied by the ordinary mark of such party made in the presence of the attesting witnesses.

The memorial may be made on behalf of the Crown by the Provincial Treasurer or other officer of the Crown, in whose hands the document is, and it must state the name, office and domicile of the person by whom it is made. — R. S. Q., 5835, as amended by 52 V., c. 26, s. 1.

2138. When there are more writings than one to complete the rights of the person requiring registration, they may be all included in one memorial without its being necessary to insert more than once therein the description of the parties or of the immoveables or other property.

2138*a*. One memorial is sufficient, in the case of several obligations, titles or claims, from the same debtor, upon one or more immoveables in favor of the same creditor or acquirer, and also in the case of several successive titles and transfers of the same property. — R. S. Q., 5836.

2139. The memorial must set forth:

1. The date of the title and the name of the place where it was executed;

If it be a notarial act, the name of the notary who keeps the original thereof, or the name of the notaries or of the notary and witnesses who signed it, if the original have been delivered; if it be a private writing the names of the subscribing witnesses; if it be a judgment or other judicial act, it must designate the court;

2. The nature of the title;

3. The description of the creditors and debtors and other parties thereto;

4. The description of the property subject to the right claimed, and that of the party requiring registration;

5. The nature of the right claimed ,and, if it be a claim for money, the amount due, the rate of interest, and the costs if there be any.

If the rate of interest be not specified, the registration does not preserve the right to interest beyond the legal rate. (5 %)

2140. The memorial is delivered to the registrar together with the title or document, or an authentic copy of the title, and must be acknowledged by all or one of the parties to it, or be proved by the oath of one of the subscribing witnesses. — N. 2148.

2141. When the memorial is executed in any part of Canada it may be proved in Lower Canada, by the affidavit of one of the witnesses, sworn to before a judge of the court of Queen's Bench, or of the Superior Court, or a commissioner of the latter court for taking affidavits, or before a justice of the peace, a notary, the registrar, or his deputy.

2142. When the memorial is executed in Upper Canada, proof thereof may be there made and attested in the same manner before a judge of the Court of Queen's Bench or of the Court of Common Pleas, or before a justice of the peace, or a notary, or before a commissioner of the Superior Court for Lower Canada.

2143. When it is executed in any other British possession it may be proved therein by an affidavit sworn to before the mayor of the place, the chief justice or a judge of the supreme court, or before a commissioner authorized to take affidavits to be used in the courts of Lower Canada.

2144. If it be executed in a foreign country the affidavit may be sworn to before any minister, or *chargé d'affaires*, or consul of Her Majesty in such foreign state.

2144*a*. The memorial may also be executed before a notary by deed *en minute* or *en brevet*.

The memorial so executed need not be attested before

a witness nor proved under oath nor be accompanied by the title of which it is a memorial, notwithstanding the provisions of articles 2137 and 2140 of this code, and may contain the official number even if such number be not in the title of which it is a memorial. — 52 V., c. 26, s. 2.

2145. When any memorial of a title is presented for registration the registrar is bound to endorse upon such title the words "registered by memorial," mentioning the day, the hour and time at which such memorial is entered, and also in what book and page and under what number the same is entered and registered. And he must sign such certificate.

The memorial remains among the records of the registry office and forms part thereof.

2145*a*. *As contained in article* 5838, *R. S. Q., is repealed by* 52 *V., c.* 26, *s.* 3.

2146. Every claim or memorial for the preservation of interest or of arrears of rent must specify the amount thereof and the title under which they are due, [and be accompanied by the affidavit of the creditor that such amount is due.] — C. 2125.

2147. The provisions of this section apply if necessary to any documents or titles which do not affect immoveables, but the registration of which is required by some special law, unless it be otherwise provided.

2147*a*. The notices, declarations and memorials mentioned in articles 2026, 2098, 2106, 2107, 2111, 2115, 2116, 2120, 2121, 2125, 2131, 2132, 2133, 2136, 2146, 2161, 2168 and 2172, may be given either under private seal or by notarial deed, *en minute* or *en brevet*.

Such notices, declarations or memorials, if *en brevet* or under private seal, must remain in the registry office, but if *en minute* the delivery of an authentic copy is sufficient.

The certificate of registration is affixed to such notices, declarations or memorials, only if it be demanded. — 52 V., c. 26, s. 4.

2147*b*. The notices and declarations mentioned in articles 2098, 2131 and 2172, may be given to registrars for those interested, by any person whomsoever, whether related or not. They may also be given by married women, interdicted persons, and the minors themselves. — R. S. Q., 5839. — C. 2087.

CHAPTER FIFTH.

OF THE CANCELLING OF REGISTRATIONS OF REAL RIGHTS.

2148. The registration of real rights, or the renewal thereof, may be cancelled with the consent of the part-

ies, or in virtue of a judgment from which there is no appeal, or which has become final.

The acquittance of a debt implies a consent to its being cancelled.

Any notary who executes a total or partial discharge of a hypothec, is bound to cause the same to be registered in the proper division, according to the statute 27th and 28th Vict., ch. 40.

The creditor is bound to see that the discharge is registered, and is responsible for any costs that may be incurred in consequence of non-registration, and he cannot be compelled to grant a discharge, unless a sufficient sum is placed in his hands to pay for the registration and transmission. — N. 2158.

2149. If the cancelling be not consented to, it may be demanded from the proper court by the debtor or other holder, by any subsequent hypothecary creditor, by a surety, or by any party interested, together with whatever damages may be due.— N. 2159.

2150. The cancelling is ordered when the registration, or the renewal, has been effected without right or irregularly, or upon a void or informal title, or when the right registered has been annulled, rescinded or extinguished by prescription or otherwise. — N. 2160.

2151. The consent to the cancelling and the acquittance or certificate of discharge may be in authentic form or under private signature.

When under private signature they must be attested by two witnesses, and cannot be received by the registrar unless they are accompanied by an affidavit of one of such witnesses sworn to before one of the functionaries mentioned in articles 2141, 2142, 2143 and 2144, as the case requires, and establishing that the money has been paid in whole or in part, and that such acquittance, certificate of discharge, or consent to the cancelling was signed in the presence of such witness. by the party granting it.

The discharge of any hypothec in favor of the crown may be entered in the margin against the registry of such hypothec upon the production of a copy:

1. Of an order of the Governor in Council, certified by the clerk of the Executive Council or his deputy;

2. Or of a certificate of Her Majesty's attorney-general or solicitor-general for Lower Canada, stating that such hypothec is discharged in whole or in part.

The discharge of any hypothec securing a life-rent is entered on the margin upon production of the certificate of death of the person on whose life the rent is creat-

ed, accompanied by an affidavit identifying such person, and such affidavit may be received and certified by one of the functionaries mentioned in articles 2141, 2142, 2143 and 2144, as the case requires.

2152. The consent to the cancelling and the acquittance or certificate of discharge, or the judgment rendered to avail in lieu thereof, must when produced be mentioned in the margin of the registry of the title or memorial establishing the creation or existence of the right so cancelled.

The consent to the cancelling, the acquittance or the certificate of discharge, when they are private writings, or a certified copy thereof when they are in notarial form as well as the copy of any judgment rendered to avail in lieu thereof, registered in conformity with the present article and the succeeding articles of this chapter must remain deposited in the office where such registration takes place.

2152*a*. The cancellation of the registration of real rights is made by simply presenting and depositing in the registry office to which it appertains, to remain among and form part of the records thereof, documents or authentic copies or extracts from documents, as the case may be, authorizing the cancellation, and by the noting of such documents thus presented and deposited, in the margin of the registration of the document creating or showing such cancelled rights. — R. S. Q., 5840.

2153. The judgment declaring the nullity, extinction or dissolution of the right registered cannot however be registered, unless it is accompanied by a certificate that the delays allowed to appeal from such judgment have expired, without such appeal having taken place.

2154. Such judgment must have been served upon the defendant in the usual manner.

2155. The sheriff is bound to cause all his deeds of sale of immoveables under execution to be registered, at the expense of the purchaser, as soon as possible, and before delivering to any person whatever any duplicate thereof.

2156. The prothonotary of the Superior Court is bound to cause to be registered as soon as possible, at the expense of the applicant or the purchaser, as the case may be, all judgments of confirmation of title and all decrees of adjudication upon forced licitation, before delivering

copies thereof to any person whatever.

2157. The registration at length of confirmations of title, forced licitations, sheriff's sales, sales in bankruptcy, and other sales having the effect of discharging property from hypothecs, whether made before or after the ninth day of June, one thousand eight hundred and sixty-two, is equivalent to the registration of a certificate of the discharge or of the extinction of all rights which are discharged by such sales, forced licitations or confirmations of title, even of hypothecs for conventional dower; and it is the duty of the registrar in such case to make mention thereof in the margin of each entry establishing a previous right extinguished by such sale, confirmation of title, or decree of adjudication. — C. 2081 §§ 6 et 7. — P. 781, 1054, 1084.

2157*a*. Articles 2148, 2152, 2152*a*, 2153 and 2154 apply to the registration of any judgment for the re-entry upon abandoned lands, and apply also to the cancelling of the registration of any deed of sale declared void by such judgment; but article 2154 does not apply if the buyer has been notified in the manner prescribed by article 68 of the Code of Civil Procedure. — R. S. Q., 5841.

CHAPTER SIXTH.

OF THE ORGANIZATION OF REGISTRY OFFICES. [1]

SECTION I.

OF REGISTRY OFFICES AND THE REGISTERS.

2158. At the chief-place of each county, or in each registration division set apart by law or by proclamation of the governor, a registry office is established for the registration of all real rights affecting immoveables situate within such county or registration division, and of all other acts requiring registration. — N. 2146.

2159. A public officer called a registrar is appointed by the governor to keep such registry office, who is charged to execute the duties prescribed by this title; and every act of fraud which he commits or allows to be committed in the exercise of the duties of his office, subjects him to pay to the party injured triple damages with costs, besides loss of office and other penalties imposed by law. — P. 808.

2160. Registry offices must be kept open every day, Sundays and holidays excepted, from nine o'clock in the morning until four o'clock in the afternoon. — R. S. Q., 5842.

2161. Every registrar shall keep:

1. An alphabetical index or repertory of the names of all persons mentioned in the acts or documents registered as acquiring or conveying any right affected by such registration, with a reference to the number of the document, and the page of the register in which it is entered, and, when immoveables are concerned, the name of the place where they are situated;

2. An alphabetical list of all parishes, townships, seigniories, cities, towns, villages, and extra-parochial places within his registry division, containing a reference under the head of each local division to all entries of documents concerning immoveables comprised within such division, or giving the number and other references mentioned in the preceding paragraph, so as to serve as an index to immoveables, and such list must be made in conformity with the provisions of article 2171;

3. An entry-book in which are entered the year, month, day and hour when each document is brought for registration, the date of the document, the name of the notary who received it, if a notarial deed, the names of the parties to the same and of the person by whom the same is brought, the nature of the right of which registration is required, and a general description of the immoveable affected thereby. — 2 Ed. VII., c. 39.

4. A register in which all documents presented for registration are transcribed.

5. A book in which are registered the notices required by articles 2115, 2116, 2120, 2121, with an index to be made in the same manner as the index prescribed in article 2131.

2161*a*. A register for the addresses or elections of domicile of hypothecary creditors, must be kept in each registry office. — R. S. Q., 5843.

2161*b*. Every hypothecary creditor or every transferee, heir, donee or legatee of an hypothecary creditor, shall give to the registrar of the registration division wherein the immoveables hypothecated are situated notice of his address or of his elected domicile, and, if he afterwards changes his residence, of his new address. — *Id.*

2161*c*. Each address or elected domicile is entered in the register of addresses, and the number of the entry of the same is noted in the index to immoveables, in the page or space allotted for the lot or sub-division hypothecated in favor of the person giving the notice. — *Id.*

2161*d*. A copy of the notice for the sale of immoveables under seizure must be

given by the sheriff to the registrar to remain deposited in his office, and an entry must be made by the latter in his index to immoveables or in the margin opposite the last entry in the books, for each lot or piece of land mentioned in such notice, by writing the words 'under seizure No. .' — *Id.* — P. 719.

2. A copy of the notice for the sale of immoveables judicially ordered in suits for partition must in like manner be given by the party publishing the notice, and a similar entry made thereof by the registrar in the index to immoveables by writing the words: "in licitation, No. ."

3. A copy of the notice of application for confirmation of title must in like manner be given by the applicant, and a similar entry thereof made by the registrar in the index to immoveables by writing the words: "Confirmation of title applied for, No. ." — 5 Ed. VII., c. 30, s. 1.

2161*e*. A notice must be immediately sent by the registrar, by registered letter, to each hypothecary creditor, whose name is entered in the register of addresses, informing him that the immoveable hypothecated to him is under seizure or to be sold by licitation, as the case may be, and of the place where, and the time when, it will be sold. — *Id.* — P. 719. — 5 Ed. VII., c. 30, s. 2.

In cases of application for confirmation of title, the notice must inform the creditor that application for confirmation of title has been made and of the place where and the time when the application will be presented to the court. — 5 Ed. VII., c. 30; s. 3.

2161*f*. The registrar must until the notices mentioned in article 2161*d* are cancelled, mention them in all certificates demanded of him either against the immoveable described in such notices, or against the person upon whom the immoveable was seized, the coproprietors in the case of licitation, or the vendor or assignor of the applicant for confirmation of title, as the case may be. — 5 Ed., VII., c. 30, s. 3.

2161*g*. When the seizure is followed by judicial expropriation, the notice of seizure will be cancelled by the registration of the sheriff's deed of sale.

And, similarly, the notice of sale by licitation will be cancelled by the registration of the prothonotary's deed of sale, and the notice of application for confirmation of title by the registration of the judgment confirming the title deed. — 5 Ed. VII., c. 30, s. 4.

2161*h*. When the seizure is released or the proceedings in

licitation or for confirmation of title are abandoned, the notices mentioned in article 2161*d* are respectively cancelled by the deposit in the registry office of a certificate establishing such release or abandonment given by the prothonotary, and by the noting of the release or abandonment in the index to immoveables or in the margin of the last entry in the books after the noting of the seizure, licitation or application for confirmation of title. 5 Ed. VII., c. 30, s. 5.

2161*i*. A list of the lands sold for taxes must, within the eight days following the adjudication, be transmitted by the secretary-treasurer of each county council to the registrar to be deposited in his office; and the registrar must make an entry of the sale in his index to immoveables, or in the margin opposite the last entry in his books, for each lot or piece of land so sold, by writing the words: 'sold for municipal taxes No. . — *Id.*

And the notice must be immediately sent by the registrar by registered letter to each hypothecary creditor whose name is entered in the register of addresses, informing him of the said sale. — 5 Ed. VII., c. 30, s. 6.

2161*j*. The registrar must, until the entry of such municipal sale is cancelled, mention it in all certificates demanded of him affecting any lot or piece of land mentioned in the list. — *Id.*

2161*k*. The cancellation of the entry of such municipal sale is effected by the registration of a municipal deed of sale, or by the deposit of a certificate from the secretary-treasurer that the land has been redeemed, and by the noting of such redemption in the index to immoveables or by the noting of the municipal sale in the margin of the last entry in the books. — *Id.*

2161*l*. The omission to comply with any of the provisions of articles 2161*a* to 2161*k* does not invalidate any proceeding in any cause or matter in which such omission may occur; but the officer or other person in default is responsible for all damages which may result therefrom. — *Id*, 5 Ed. VII., c. 30, s. 7. — P. 719.

2162. In the registration divisions of Quebec and Montreal the register mentioned in paragraph 4 of the preceding article may be kept in several parts in separate books, according to the following classification:

1. Bonds, recognizances and other securities and obligations in favor of the crown; wills, and the probates thereof;

2. Marriage contracts and gifts;

3. Appointments of tutors

and curators; judgments and judicial acts and proceedings;

4. Deeds conveying the ownership of property other than those above mentioned; [the leases mentioned in article 2128, and acquittances for rent paid in anticipation;]

5. Deeds, instruments and writings creating hypothecs, privileges or charges, and not comprised in any of the preceding classes;

6. All other acts of which registration may be required in the interest of any party whatever.

[The foregoing provisions may be extended by a proclamation of the governor to any registry division the population of which exceeds fifty thousand souls.]

2163. The governor may also by proclamation direct that the registrars for the registration divisions of Quebec and Montreal, or either of them, shall keep separate registers and books for the immoveables situate within, and for those situate without the limits of the said cities respectively.

2164. The Governor in Council may alter the form of any books, indexes or other official documents to be kept by registrars, or direct new ones to be kept; and all orders to that effect are published in the Canada Gazette and take effect from the day therein appointed, provided such day be not fixed at less than one month from the publication of such order.

2165. Other provisions are contained in the statutes respecting registration.

SECTION II.

OF THE OFFICIAL PLANS AND BOOKS OF REFERENCE AND OF MATTERS CONNECTED THEREWITH.

2166. The Commissioner of Crown Lands furnishes each registry office with a copy of a correct plan, made in conformity with the provisions of chapter 37 of the Consolidated Statutes for Lower Canada and the statute 27th and 28th Vict., ch. 40, showing distinctly all the lots of land of each city, town, village, parish, township, or part thereof, comprised within the division to which such office belongs.

2167. Such plan must be accompanied by a copy of a book of reference in which are set forth;

1. A general description of each lot of land shewn upon the plan;

2. The name of the owner of each lot, so far as it can be ascertained;

3. All remarks necessary to the right understanding of the plan.

Each lot of land shewn

upon the plan is designated thereon by a number, which is one of a single series, and is entered in the book of reference to designate the same lot.

2168. When a copy of the plans and books of reference for the whole of a registration division has been deposited in the office for such division, and notice has been given by proclamation in the manner mentioned in article 2169, the number given to a lot upon the plan and in the book of reference is the true description of such lot, and is sufficient as such in any document whatever; and any part of such lot is sufficiently designated by stating that it is a part of such lot and mentioning who is the owner thereof and the properties coterminous thereto; and any piece of land composed of parts of more than one numbered lot is sufficiently designated by stating that it is so composed and mentioning what part of each numbered lot it contains.

No description of an immoveable in the notice of application for confirmation of title, or in the notice of a sale by the sheriff or by forced licitation, or of any sale having the effect of a sheriff's sale, or in the sheriff's deed, or in the judgment of confirmation, will be deemed sufficient unless it is made in conformity with the provisions of this article.

As soon as such plans and books of reference have been deposited and notice thereof has been given, notaries passing acts concerning immoveables indicated on such plan are bound to designate such immoveables by the number given to them upon such plan and in the book of reference, in the manner above prescribed; in default of such designation the registration does not affect the lot in question, unless there is filed a requisition or notice indicating the number on the plan and book of reference as being that of the lot intended to be affected by such registration. — P. 124.

2169. The deposit of the original plans and books of reference in any registration division is declared by a proclamation from the Governor in Council, fixing at the same time the day on which the provisions of article 2168 shall come into force therein.

2170. The registrar so soon as such deposit has been made, must prepare the index to immoveables mentioned in the second place in article 2161.

2171. From and after the day appointed by such proclamation the registrar must, from day to day, make up and continue the index to immoveables by entering under the number of each lot

separately designated upon the plan and book of reference, a reference to each entry thereafter made in the other books and registers affecting such lot, so as to enable any person easily to ascertain all the entries concerning it made after that time.

2172. Within two years after the day fixed by the proclamation of the Lieutenant-Governor, bringing the provisions of article 2168 into force in any registration division, the registration of any real right upon any lot of land within such division must be renewed by means of the registration at length, in the book kept for that purpose, of a notice describing the immoveable affected, in the manner prescribed in article 2168 and conforming to the other formalities prescribed in article 2131 for the ordinary renewal of the registration of hypothecs.

An index must be kept for the books used for the registration of the notices mentioned in this article, in the same manner as the index mentioned in article 2131. — R. S. Q. 5844. — C. 2147*a*, 2147*b*.

2172*a*. If the hypothec is in part extinguished, the renewal may be made for the balance only. — *Id.* 5845.

2173. If such renewal be not effected, the real rights preserved by the first registration have no effect against other creditors and subsequent purchasers whose claims have been regularly registered.

2174. The registrar cannot in any way correct or alter the plans or books of reference; and at any time if he find therein errors or omissions in the description or dimensions of any lot or parcel of land, or in the name of the owner, he must report the same to the Commissioner of Crown Lands, who may when the case requires it correct the original and the copy likewise and certify such correction.

Such correction must however be made without changing the number of the lots: and in the case of the omission of a lot it must be inserted by distinguishing it by characters or letters, so as not to interfere with the original numbering.

No right of ownership can be affected by any error in the plan or book of reference, nor can any error of description, dimensions or name be interpreted to give any person any better right to the land than his title gives him.

2174*a*. After the coming into force of the provisions of article 2168, respecting the cadastre of any locality, if it be ascertained that there are certain lots of

lands designated erroneously under several numbers, or whenever a re-numbering becomes necessary, in consequence of the construction of a new road or the closing of an old one or for any other cause, the Commissioner of Crown Lands may, on being so required by the parties interested, amend and correct the official plan and book of reference thereto of such locality, and, provided that there are no registrations of mortgages against the numbers which it is proposed to cancel, he may strike out the numbers found to be useless.

If it be found that the same territory is included in the cadastre of two different localities, or that some territory is included in the cadastre of a locality to which such territory does not belong, the official plan and book of reference of the locality to which such territory does not belong and the one to which it does belong, may be corrected in consequence.

Notice of such corrections must be given in the *Quebec Official Gazette* so soon as the correction has been certified by the Commissioner. — R. S. Q., 5846.

2175. Whenever the owner of a property designated upon the plan or book of reference, subdivides the same into town or village lots, he must deposit in the office of the Commissioner of Crown Lands a plan and book of reference certified by himself, with particular numbers and designations, so as to distinguish them from the original lots; and if the Commissioner of Crown Lands find that such particular plan and book of reference are correct, he transmits a copy certified by himself to the registrar of the division.

Another subdivision of the property may be substituted for any subdivision deposited with the registrar, or any part of the subdivision for any other part of the subdivision, by the proprietor or other person interested, provided that the plan or book of reference be made and deposited in conformity with this article. — *Id.*, 5847. — V. 53 V., c. 53.

2176. When by reason of the subdivision of the lots in any locailty it is deemed necessary, the Governor in Council may from time to time order an amended plan and book of reference to be made out and a copy thereof to be deposited with the registrar of such locality; but such amended plan and book of reference must be based upon and refer to the former ones; and the governor may by proclamation fix the day upon which they will begin to be used together with the former ones; and from and after the day so fixed the

provisions of this code shall apply to such amended plan and book of reference.

2176*a*. Whenever the plan of the lots of land of any city, town, village, parish, township or of any division whatsoever of such localities, forming part of any registration division, has been lawfully made, the Lieutenant-Governor in Council may cause to be deposited in the registry office of the proper registration division, a correct copy of such plan, together with a copy of the book of reference relating thereto.

The deposit of such plan and book of reference is announced by a proclamation of the Lieutenant-Governor in Council, determining the day upon which the provisions of article 2168 shall come into force in such registration division, respecting the localities whereof the plan of the lands has been so filed; and from the date of the period fixed in such proclamation, all the provisions of this Code apply to such plan and book of reference and to all lands and property comprised in the said plan, and to all contracts, hypothecs or deeds whatever, concerning or affecting such lands in the same manner as if the plan of the whole registration division had been deposited in conformity with article 2166. — R. S. Q., 5848.

2176*b*. The Commissioner of Crown Lands may cause to be published in the *Quebec Official Gazette* the book of reference of any or all the localities included in the registration division. — *Id.*

2176*c*. Whenever the plan and book of reference of any locality are worn out or have become defective, owing to corrections or from decay or otherwise, the Lieutenant-Governor in Council may order that such plan and book of reference be renewed, and that a copy thereof be deposited in the registry office of such locality. — *Id.*

SECTION III.

OF THE PUBLICITY OF THE REGISTERS.

2177. The registrar is bound to deliver to any person demanding the same a statement certified by himself of all the real rights affecting any particular immoveable, or which may affect the whole of any person's property, or of all hypothecs created and registered during a stated period or only against certain proprietors of the immoveable designated in a written requisition to that effect, containing a sufficient description of the owners, in

which case the requisition is mentioned in the certificate and the registrar is not responsible for any omission in the certificate resulting from errors or omissions of names in the requisition; and if such proprietors be not named in the requisition, the registrar is bound to ascertain who were proprietors during the given period in the manner provided with respect to the certificate to be given in cases of sheriff's sales.

[Nevertheless, in places where there are no official numbers given to the lands belonging to railways, registrars, when required to give certificates respecting the lands traversed by any such railway, are not bound to mention the judgments and hypothecs registered against such railway, unless specially requested so to do.] — 53 V., c. 54. — N. 2196. — P. 771 et s.

2178. He is bound to deliver, to all persons demanding the same, copies of the acts or documents registered, but he must mention thereon the discharges, cancellations, [conveyances or subrogations] thereof which are entered in such register or in the margin. — N. 2199.

He shall also give to those applying for the same, a copy of, or extract from any document remaining deposited in his office and of any register or index which is kept there. — 3 Ed. VII., c. 49.

2179. He is also bound to allow all persons desirous of examining the entry book during his office hours to take communication of the same without removing it, and free from charge.

He must likewise, upon payment of the lawful fee, exhibit the register to any person who has required the registration of an act and wishes to be assured of such registration.

He is also bound, upon payment of the fee lawfully exigible, to communicate the index to immoveables to all persons who desire to examine the same without removal. — R. S. Q. 5849.

2180. The entries upon the registers and books kept by the registrar must be consecutive without blanks or interlineations.

Every document registered must be numbered and transcribed in the order in which it is produced, and mention must be made in the margin of the register, of the hour, day, month and year when it was deposited in the office for registration.

The registrar is bound, when required to do so, to give the person who presents a document for registration a receipt indicating the num-

ber under which such document is entered in the entry-book. — N. 2203.

2181. Every register for registration must, before any entry is made therein, be authenticated in the manner prescribed in the Code of Civil Procedure. — 60 V., c. 50, s. 37. — N. 2201. — P. 1317.

2182. [The provisions of the preceding article apply equally to the entry-book and to the index to immoveables.]

TITLE NINETEENTH.

OF PRESCRIPTION.

CHAPTER FIRST.

GENERAL PROVISIONS.

2183. Prescription is a means of acquiring, or of being discharged, by lapse of time and subject to conditions established by law.

In positive prescription title is presumed or confirmed and ownership is transferred to a possessor by the continuance of his possession.

Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfilment of an obligation or the acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law. — N. 2219.

2184. Prescription cannot be renounced by anticipation. That acquired may be renounced, and so may also the benefit of any time elapsed by which prescription is begun. — N. 2220. — C. 2227, 2229.

2185. Renunciation of prescription is express or tacit. Tacit renunciation results from any act by which the abandonment of the right acquired may be presumed. — N. 2221.

2186. Persons who cannot alienate cannot renounce prescription acquired. — N. 2222.

2187. Any person interested in the acquiring of a prescription, may set it up although the debtor or the possessor have renounced it. — N. 2225. — C. 2229.

2188. The court cannot of its own motion supply the defence resulting from pre-

scription, except in cases where the right of action is denied. — N. 2223. — C. 2267.

2189. Prescriptions in respect of immoveable property are governed by the law of the place where it is situated. — C. 6.

2190. [As regards moveable property and personal actions, even in matters of bills of exchange and promissory notes and commercial matters in general, one or more of the following prescriptions may be invoked:

1. Any prescription entirely acquired under a foreign law, when the cause of action did not arise or the debt was not stipulated to be paid in Lower Canada, and such prescription has been so acquired before the possessor or the debtor had his domicile therein.

2. Any prescription entirely acquired in Lower Canada, reckoning from the date of the maturity of the obligation, when the cause of action arose or the debt was stipulated to be paid therein, or the debtor had his domicile therein at the time of such maturity; and in other cases from the time when the debtor or possessor becomes domiciled therein;

3. Any prescription resulting from the lapse of successive periods in the cases of the two preceding paragraphs, when the first period elapsed under the foreign law.] — C. 6.

2191. [Prescriptions commenced according to the law of Lower Canada, are completed according to the same law, without prejudice to the right of invoking those acquired previously under a foreign law, or by a union of periods under both laws, conformably to the preceding article.]

CHAPTER SECOND.

OF POSSESSION.

2192. Possession is the detention or enjoyment of a thing or of a right, which a person holds or exercises himself, or which is held or exercised in his name by another. — N. 2228.

2193. For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal and as proprietor. — N. 2229.

2194. A person is always presumed to possess for himself and as proprietor, if it be not proved that his possession was begun for another. — N. 2230.

2195. When possession is begun for another, it is always presumed to continue so, if there be no proof to the contrary. — N. 2231.

2196. Acts which are mere-

ly facultative or of sufferance cannot be the foundation either of possession or of prescription. — N. 2232.

2197. Nor can acts of violence be the foundation of such a possession as avails for prescription. — N. 2233.

2198. [In cases of violence or clandestinity, the possession which avails for prescription begins when the defect has ceased.

Nevertheless the thief, his heirs and successors by universal title, cannot by any length of time prescribe the thing stolen.]

Successors by particular title do not suffer from these defects in the possession of previous holders, when their own possession has been peaceful and public. — N. 2233. — C. 2268 § 5.

2199. An actual possessor who proves that he was in possession at a former period is presumed to have possessed during the intermediate time, unless the contrary is proved. — N. 2234.

2200. A successor by particular title may join to his possession that of his author in order to complete prescription.

Heirs and other successors by universal title continue the possession of their author, saving the case of interversion of title.—N. 2233, 2235, 2237. — C. 2205, 2208.

CHAPTER THIRD.

OF THE CAUSES WHICH HINDER PRESCRIPTION, AND SPECIALLY OF PRECARIOUS POSSESSION AND OF SUBSTITUTIONS.

2201. Things which are not objects of commerce cannot be prescribed.

Special provisions explanatory of the present article are to be found in the fourth chapter of this title.

2202. [Good faith is always presumed.]

He who alleges bad faith must prove it. — N. 2262, 2268.

2203. Those who possess for another, or under acknowledgment of a superior domain, never prescribe the ownership, even by the continuance of their possession after the term fixed.

Thus emphyteutic lessees, tenants, depositaries, usufructuaries and those who hold precariously the property of another cannot acquire it by prescription.

They cannot by prescription liberate themselves from the obligation of paying dues attached to their possession, but the measure of such dues and any arrears thereof are prescriptible.

Emphyteusis, usufruct and other like proprietary rights are susceptible of a distinct ownership and of a possession available for prescrip-

tion. The proprietor is not hindered by the title which he has granted from prescribing against these rights.

He who has been put in definitive possession of the property of an absentee only begins to prescribe against him or his heirs or legal representatives, when such absentee returns or his death becomes known or may be legally presumed.—N. 2236, 2239. — C. 101, 102, 2232, § 4, 2250.

2204. Heirs and successors by universal title of those whom the preceding article hinders from prescribing, cannot themselves prescribe. — N. 2237.

2205. Nevertheless the persons mentioned in articles 2203 and 2204 and also persons charged with a substitution, may, if their title have been interverted, begin a possession available for prescription, dating from the information given to the proprietor by notification or other contradictory acts.

Such notification of title and other contradictory acts only avail when made to or in respect of a person against whom prescription can run. — N. 2238. — C. 2200, 2208.

2206. Subsequent purchasers in good faith, under a translatory title derived either from a precarious or subordinate possessor, or from any other person, may prescribe by [ten years] against the proprietor during such subordinate or precarious holding.

Third parties may also, during a subordinate or precarious holding, prescribe against the proprietor by thirty years with or without title. — N. 2239, 2257. — C. 2242, 2251 et s.

2207. In cases of substitution, prescription does not run against the substitute, before the opening of the right, in favor of the institute, nor of his heirs or successors by universal title.

[Prescription runs against the substitute before the opening of the right, in favor of third parties, unless he is protected as a minor, or otherwise.

Any substitute, against whom prescription thus runs, may bring an action to interrupt it.]

The possession of the institute avails the substitute, for the purposes of prescription.

Prescription runs against the institute during the time of his possession and in his favor against third parties.

After the opening, prescription may begin to run in favor of the institute and of his heirs and successors by universal title. — C. 949, 2205.

2208. No one can prescribe against his title, in this sense that no one can change

the cause and nature of his own possession, except by interversion. — N. 2240. — C. 2200, 2205.

2209. A person may prescribe against his title in the sense that he may be freed by prescription from an obligation he has contracted. — N. 2241.

2210. Positive prescription by thirty years takes place, for the contents of corporeal immoveables in excess of what is given by the title, and negative prescription takes place by the same time in all cases, in diminution of obligations which the title imposes.

In the matter of dues and rents, the enjoyment of more than the title shows a right to does not give rise to the acquisition of such excess by prescription. — C. 1504.

CHAPTER FOURTH.

OF CERTAIN THINGS IMPRESCRIPTIBLE AND OF PRIVILEDGED PRESCRIPTIONS.

2211. The crown may avail itself of prescription. The subject may interrupt such prescription by means of a petition of right, apart from the cases in which the law gives another remedy.

Among priviledged persons, the privilege takes effect in the matter of prescription. — N. 2227.

2212. The rights of the crown with regard to sovereignty and allegiance are imprescriptible. — N. 2226.

2213. Sea-beaches and lands reclaimed from the sea, ports, navigable or floatable rivers, their banks and the wharfs, works and roads connected with them, public lands, and generally all immoveable property and real rights forming part of the domain of the crown are imprescriptible. — N. 2226, 538, 540, 541. — C. 400, 402, 403.

2214. The rights of the crown to the principal of rents, dues, and revenues owing and payable to it, and to the capital sums accruing from the alienation or from the use of crown property, are also imprescriptible.

2215. All arrears of rents, dues, interest and revenues, and all debts and rights, belonging to the crown, not declared to be imprescriptible by the preceding articles, are prescribed by thirty years.

Subsequent purchasers of immoveable property charged therewith cannot be liberated by any shorter period. — N. 2227. — C. 2250.

2216. Property escheated to the crown, by failure of heirs, bastardy or forfeiture, is not considered as incorporated or assimilated to the crown domain for purposes of prescription until a declaration to that effect is made, or until after ten

years of enjoyment and actual possession, in the name of the crown, of the totality of the rights thus escheated in the particular case.

Until such incorporation or assimilation, such property continues to be subject to the ordinary prescriptions.— C. C. 35, 401, 606, 637.

2217. Sacred things, so long as their destination has not been changed otherwise than by encroachment, cannot be acquired by prescription.

Burial grounds, considered as sacred things, cannot have their destination changed, so as to be liable to prescription, until the dead bodies, sacred by their nature, have been removed. — C. 2201.

2218. [Positive prescription of corporeal immoveables not sacred, and negative prescription as regards the principal of rents and dues, legacies and rights of hypothec, take place against the church in the same manner and according to the same rules as against private persons.

Purchasers with title and good faith prescribe against the church by ten years, whether positively or negatively, in the same way as against private persons.

Positive prescription of corporeal moveables not sacred, and the other negative prescriptions, including that of capital sums, take place against the church as against private persons.]

2219. The right to tithes and the rate of the tithe are imprescriptible. Positive prescription by forty years runs between neighboring rectors.

Arrears of tithes can only be demanded for one year.

Tithes must be paid at the rector's residence. — R. S. Q., 5850.

2220. Roads, streets, wharfs, landing places, squares, markets and other places of a like nature, possessed for the general use of the public, cannot be acquired by prescription, so long as their destination has not been changed otherwise than by tolerating the encroachment. — N. 538, 2227.

2221. Any other property belonging to municipalities or corporations, the prescription of which is not otherwise determined by this code, is subject even when held in mortmain, to the same prescriptions as the property of private persons.

CHAPTER FIFTH.

OF THE CAUSES WHICH INTERRUPT OR SUSPEND PRESCRIPTION.

SECTION I.

OF THE CAUSES WHICH INTERRUPT PRESCRIPTION.

2222. Prescription may be

interrupted either naturally or civilly. — N. 2242. — C. 2095, 2255, 2264.

2223. Natural interruption takes place when the possessor is deprived, during more than a year, of the enjoyment of the thing, either by the former proprietor or by any one else. — N. 2243. — C. 2193, 2199.

2224. A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption.

Seizures, set-off, interventions and oppositions, are considered as judicial demands.

No extra-judicial demand, even when made by a notary or bailiff, and accompanied with the titles, or even signed by the party notified, is an interruption, if there be not an acknowledgment of the right. — N. 2224. — C. 2211.

2225. A demand brought before a court of incompetent jurisdiction does not interrupt prescription. — N. 2246.

2226. Prescription is not interrupted:

If the service or the procedure be null from informality;

If the plaintiff abandon his suit;

If he allow peremption of the suit to be obtained;

If the suit be dismissed.— N. 2247. — C. 2265.

2227. Prescription is interrupted civilly by renouncing the benefit of a period elapsed, and by any aknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs. — N. 2248. — C. 1229, 1235, § 1, 2184 et s.

2228. A judicial demand brought against the principal debtor, or his acknowledgment, interrupts prescription as regards the surety. The same acts against or by a surety interrupt prescription as regards the principal debtor. — N. 2250.

2229. Renunciation by any person of a prescription acquired does not prejudice his codebtors, his sureties, or third parties. — C. 2187.

2230. Every act which interrupts prescription with regard to one of joint and several creditors benefits the others.

When the obligation is indivisible, acts of interruption with regard to some only of the heirs of a creditor, benefit the others.

If the obligation be divisible, even when the debt is hypothecary, acts of interruption in behalf of some only of such heirs do not benefit the other heirs. In the same case these acts only

benefit the other joint and several creditors for the share of the heirs with regard to whom such acts have been done. In order that the interruption should in this case produce the full effect with regard to the other joint and several creditors, it is necessary that the acts which interrupt should have been done as to all the heirs of the deceased creditor. — N. 1199, 2249. — C. 1102, 2239.

2231. Every act which interrupts prescription by one of joint and several debtors, interrupts it with regard to all.

Acts of interruption with regard to one of the heirs of a debtor, interrupt prescription with regard to the other heirs and joint and several debtors, when the obligation is indivisible.

If the obligation be divisible, even when the debt is hypothecary, a judicial demand brought against one of the heirs of a joint and several debtor, or his acknowledgment, does not interrupt prescription with regard to the other heirs; without prejudice to the right of the creditor to exercise his hypothec within the proper time on the whole of the immoveable property charged, for that portion of the debt for which he retains his right.

In the same case, these acts only interrupt prescription with regard to the joint and several codebtors for the share of the heir who is sued or has acknowledged the right. In order that in this case the interruption should take place for the whole with regard to the joint and several codebtors, it is necessary that the judicial demand or the acknowledgment should take place with regard to all the heirs of the deceased debtor.

Acts which interrupt prescription with regard to the debtor do not interrupt the prescription by a third party holding the immoveable property burthened with any charge or hypothec; they affect him in the sense that they hinder the extinction by prescription of the debt to which the hypothec is attached.

These acts against the holders of other immoveables or of other portions of the same immoveable, do not prejudice the holder of a separate portion of the property, with regard to whom they have not taken place.

When done with regard to one joint holder of undivided property they interrupt prescription with regard to the others.

In natural interruption, however, it suffices that one of the possessors of undivided property, or an heir of one of them should have kept

useful possession of the whole in order to secure the advantage of it to the others. — N. 1206, 2249. — C. 565, 1110.

SECTION II.

OF THE CAUSES WHICH SUSPEND THE COURSE OF PRESCRIPTION.

2232. [Prescription runs against all persons, unless they are included in some exception established by this code, or unless it is absolutely impossible for them in law or in fact to act by themselves or to be represented by others.

Saving what is declared in article 2269, prescription does not run, even in favor of subsequent purchasers, against those who are not born, nor against minors, idiots madmen or insane persons, with or without tutors or curators. Those to whom a judicial adviser is given and persons interdicted for prodigality do not enjoy this privilege.

Prescription runs against absentees as against persons present and by the same lapse of time, saving what is declared as to persons authorized to take provisional possession of the estate of an absentee.] — N. 2251. — C. 101, 102, 106, 566, 2208, 2258.

2233. Husband and wife cannot prescribe against each other. — N. 2253.

2234. Prescription runs against a married woman, whether separated or in community, with respect to her private property, including her dowry, even when her husband has the administration of it, saving her recourse against her husband. Nevertheless, when the husband is liable as warrantor for having alienated the property of the wife without her consent, and in all cases where the action against the debtor or the possessor would turn against the husband, prescription does not run against the married woman, even in favor of subsequent purchasers. — N. 2254, 2256.

2235. Neither does prescription run against the wife during marriage, even in favor of subsequent purchasers, with respect to dower and other rights of survivorship, nor with respect to the preciput or other distinct rights which she can only exercise after the dissolution of the community, either by accepting or renouncing, unless the community has been dissolved during the marriage; at the time of which dissolution prescription begins against the wife, as regards the rights which she may then exercise in consequence of such dissolution.

Saving what is excepted in the present article, prescription acquired or which has

run against the property of the community affects the share of the wife who accepts. — N. 2255, 2256. — C. 111, 208, 1322, 1404, 1438, 1449.

2236. Prescription of personal actions does not run:

With respect to debts depending on a condition, until such condition happens;

With respect to actions in warranty, until the eviction takes place;

With respect to actions in a term, until the term has expired. — N. 2257.

2237. Prescription does not run against a beneficiary heir, with respect to claims he has against the succession.

It runs against a vacant succession, although there be no curator. — N. 2258. — C. 671, § 2.

2238. It runs during the delays for making an inventory and deliberating. — N. 2259.

2239. The particular rules concerning the suspension of prescription with regard to joint and several creditors and their heirs are the same as those concerning interruption in like cases, explained in the preceding section. — C. 2230.

CHAPTER SIXTH.

OF THE TIME REQUIRED TO PRESCRIBE.

SECTION I.

GENERAL PROVISIONS.

2240. Prescription is reckoned by days and not by hours.

[Prescription is acquired when the last day of the term has expired; the day on which it commenced is not counted.] — N. 2260, 2261.

2241. The rules of prescription in other matters than those mentioned in the present title are explained in the particular titles relating to such matters.

SECTION II.

OF PRESCRIPTION BY THIRTY YEARS, OF PRESCRIPTION OF RENTS AND INTEREST, AND OF THE DURATION OF THE PLEA OF PRESCRIPTION.

2242. All things, rights and actions the prescription of which is not otherwise regulated by law, are prescribed by thirty years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith. — N. 475, 2262. — C. 235, 479, 562 et s., 2206, 2255, 2265.

2243. Prescription of the action to account and of the other personal actions of minors against their tutors, relating to the acts of the tutorship, takes place conformably to this rule, and is reckoned from the majority.

2244. If a title be shewn, it helps to establish the defects of the possession which hinder prescription.

2245. [Prescription by thirty years, has, in all prescriptible cases, the same effects as that by a hundred years or as immemorial prescription formerly had, whether as regards the right, or for covering the defects of title, informalities or bad faith.

2246. Any person who is in possession as proprietor of a thing or a right, preserves, by reason of such possession, his right to set up by plea against any demand in revendication of such thing or right, all such grounds of nullity or other grounds as tend to defeat the action, although his right to do so by direct action may have been prescribed.

In personal actions, likewise, the defendant may effectively plead all grounds tending to defeat the action, although the time during which he could urge such grounds by direct action may have elapsed.

The foregoing provisions of this article apply only to such grounds of exception as strike at the principle of the action and destroyed it at a time when no acquired prescription could prevent them from doing so. Thus a claim prescribed cannot be pleaded in compensation unless the compensation had taken effect before it was prescribed, and then it may be pleaded [whether the claim be for a debt of a commercial nature or for any other cause.]

The adoption of the grounds of such plea does not revive the right to urge them by direct action. — C. 1188.

2247. The hypothecary action joined to the personal is not subject to a longer prescription than the latter alone. — N. 2262. — C. 2017 § 4.

2248. [The term attached by law or by stipulation to a right of redemption is absolute without prescription being required.

So is the term attached to the right of a vendor to take back an immoveable, by reason of non-payment of the price.]

The right to redeem rents comes from the law; it is imprescriptible. — C. 389 et s., 1537, 1548, 1789.

2249. After twenty-nine years from the date of the last title, the debtor of emphyteutic dues or of a rent may be obliged, at his own

cost, to furnish the creditor or his legal representatives with a renewal-deed. — N. 2263.

2250. [With the exception of what is due to the crown, and the interest on judgments (62 V., c. 51), all arrears of rents, including life-rents, all arrears of interest, of house-rent or land-rent, and generally all fruits natural or civil are prescribed by five years.

This provision applies to claims resulting from emphyteutic leases or other real rights, even where there is privilege or hypothec.

Prescription of arrears takes place although the principle be imprescriptible by reason of precarious possession.]

Prescription of the principal carries with it that of the arrears. — N. 2277. — C. 2203 § 3, 2215, 2267.

SECTION III.

OF PRESCRIPTION BY SUBSEQUENT PURCHASERS.

2251. He who acquires a corporeal immoveable in good faith under a translatory title, prescribes the ownership thereof and liberates himself from the servitudes, charges and hypothecs upon it by an effective possession in virtue of such title [during ten years.] — N. 2265. — C. 1449, 1553, 2193, 2206, 2215, 2218, 2232 § 2., 2234, 2235, 2269.

2252. A subsequent purchaser of dues or rents with title and in good faith, prescribes the capital thereof by means of an indefective enjoyment during [ten years,] against the creditor who has during that time entirely failed to enjoy and neglected to act.

2253. It is sufficient that the good faith of subsequent purchasers existed at the time of the purchase, even when their effective possession only commenced later.

The same rule is observed with regard to every preceding purchaser whose possession is added to theirs for this prescription. — N. 2269.

2254. A title which is null by reason of informality cannot serve as a ground for prescription by ten years. — N. 2267.

2255. After prescription by ten years has been renounced or interrupted, prescription by thirty years alone can be commenced. — C. 2264.

2256. Prescription by ten years and the other lesser prescriptions may be invoked separately against the same demand together with that by thirty years.

2257. In cases where prescription by ten years can run, each new holder of an immoveable burthened with a servitude, charge or hy-

pothec, may be obliged to furnish a renewal-title at his own cost. — C. 2057.

SECTION IV.

OF CERTAIN PRESCRIPTIONS BY TEN YEARS.

2258. The action in restitution of minors for lesion, the action in rectification of tutors' accounts and that in rescission of contracts for error, fraud, violence or fear, are prescribed by ten years.

This time runs in the case of violence or fear from the day it ceased; and in the case of error or fraud from the day it was discovered.

This time only runs with regard to interdicted persons from the day the interdiction is removed, except for prodigals or persons to whom a judicial adviser has been given. It does not run against idiots, madmen and insane persons although not interdicted. It does not run against minors until they become of age. — N. 1304. — C. 2232, 2269.

2259. The action for indemnity under article 1688 must be taken within ten years from the date of the loss.

If, however, the defect is one which is only gradually revealed, prescription shall begin to run from the expiration of the ten years mentioned in article 1688.— 7 Ed. VII., c. 55, s. 1.

SECTION V.

OF CERTAIN SHORT PRESCRIPTIONS.

2260. The following actions are prescribed by five years:

2. [For professional services and disbursements of and disbursements of advocates and attorneys, reckoning from the date of the final judgment in each case;

2. [For professiondal services and disbursements of notaries and fees of officers of justice, reckoning from the time when they became payable;]

3. Against advocates, attorneys, notaries and other officers or functionaries who are depositaries in virtue of their office, for the recovery of papers and titles confided to them, reckoning from the termination of the proceedings in which such papers and titles were made use of, or, in other cases, from the date of their reception;

4. Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of grain or other things, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity; this prescription however does not apply to bank notes;

5. Upon sales of moveable effects between non-traders or between traders and non-traders, these latter sales being in all cases held to be commercial matters;

6. For hire of labor, or for the price of manual, professional or intellectual work and materials furnished, saving the exceptions contained in the following articles;

7. For visits, services, operations and medicines of physicians or surgeons, reckoning from each service or thing furnished.

The oath of the physician or surgeon makes proof as to the nature and duration of the services.—R. S. Q., 5851. — N. 2272, 2273, 2276. — C. 1734, 2267.

2261. [The following actions are prescribed by two years:

1. For seduction, or lying-in expenses;

2. For damages resulting from offences or quasi-offences, whenever other provisions do not apply;

3. For wages of workmen not reputed domestics and who are hired for a year or more;

4. For sums due schoolmasters and teachers, for tuition, and board and lodging furnished by them. — N. 2271, 2272 ,2273. — C. 2267.

2262. The following actions are prescribed by one year:

1. For slander or libel, reckoning from the day that it came to the knowledge of the party aggrieved;

2. [For bodily injuries, saving the special provisions contained in article 1056 and cases regulated by special laws;]

3. [For wages of domestic or farm servants, merchants' clerks and other employees who are hired by the day, week or month, or for less than a year;]

4. [For hotel or boarding-house charges.] — N. 1781, 2272. — C. 2267.

2263. Short limitations and prescriptions established by acts of parliament, follow the rules peculiar to them, as well in matters respecting the rights of the crown as in those respecting the rights of all others.

2264. After renunciation or interruption, except as to prescription by ten years in favor of subsequent purchasers, prescription recommences to run for the same time as before, if there be no novation, saving the provisions of the following article. — C. 2255.

2265. Any action which is not declared to be perempted, and any judicial condemnation, constitutes a title which is only prescribed by thirty years, although the subject matter thereof be sooner prescriptible.

A judicial admission interrupts prescription, even in an action the peremption of

which is declared or which is otherwise insufficient to interrupt it alone; but the prescription which recommences is not thereby prolonged. — N. 2244, 2247, 2248. — C. 2226.

2266. A continuation of like services, work, sales or supplies, does not hinder a prescription, if there have been no acknowledgment or other cause of interruption. — N. 2274.

2267. [In all the cases mentioned in articles 2250, 2260, 2261 and 2262 the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired.] — N. 2275. — C. 2188.

2268. Actual possession of a corporeal moveable, by a person as proprietor, creates a presumption of lawful title. Any party claiming such moveable must prove, besides his own right, the defects in the possession or in the title of the possessor who claims prescription, or who, under the provision of the present article, is exempt from doing so.

Prescription of corporeal moveables takes place after the lapse of three years, [reckoning from the loss of possession,] in favor of possessors in good faith, [even when the loss of possession has been occasioned by theft.]

This prescription is not, however, necessary to prevent revendication, if the thing have been bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, [nor in commercial matters generally;] saving the exception contained in the following paragraph.

Nevertheless, so long as prescription has not been acquired, the thing lost or stolen may be revendicated, although it have been bought in good faith in the cases of the preceding paragraph; but the revendication in such cases can only take place upon reimbursing the purchaser for the price which he has paid.

If the thing have been sold under the authority of law, it cannot, in any case, be revendicated.

The stealer or other violent or clandestine possessor of a thing, and his successors by general title, are debarred from prescribing by articles 2197 and 2198. — N. 2279, 2280. — C. 1488, 1489, 1490. — P. 668.

2269. Prescriptions which the law fixes at less than thirty years, other than those in favor of subsequent purchasers of immoveables with title and in good faith, and that in case of rescission of contracts mentioned in article 2258, run against minors, idiots, madmen and insane persons, whether or not

they have tutors or curators, saving their recourse against the latter. — N. 2278. — C. 2232.

SECTION VI.

TRANSITORY PROVISIONS.

2270. Prescriptions begun before the promulgation of this code, must be governed by the former laws.

[Nevertheless prescriptions then begun, for which, according to these laws, an immemorial duration or one of a hundred years is required, are acquired without respect to such necessity.

OF IMPRISONMENT IN CIVIL CASES.

2271. *Repealed by* 60 *V., c.* 50, *s.* 38.
2272. *Ibid.*
2273. *Ibid.*
2274. *Ibid.*
2275. *Ibid.*
2276. *Ibid.*
2277. *Ibid.*

Vide P. 832 et s.

BOOK FOURTH.

COMMERCIAL LAW.

GENERAL PROVISION.

2278. The principal rules applicable in commercial cases which are not contained in this book are declared in the several preceding books, and more especially in the titles *Of Obligations, Of Sale, Of Lease, Of Mandate, Of Pledge, Of Partnership* and *Of Prescription,* in the third book.

TITLE FIRST.

OF BILLS OF EXCHANGE, NOTES AND CHEQUES.

Articles 2279 *to* 2354, *both inclusive, of the Civil Code of Lower Canada have been repealed by "The Bills of Exchange Act,* 1890," 53 *V., c.* 33, *s.* 95, *Ca., except in so far as these articles, or any of them, relate to evidence in regard to bills of exchange, cheques, and promissory notes.*

The following are the articles of the Civil Code that relate more or less directly to evidence in regard to bills of exchange, cheques, and promissory notes.

CHAPTER 119.

An Act relating to Bills of Exchange, Cheques and Promissory Notes.

SHORT TITLE.

1. This Act may be cited as the Bills of Exchange Act. — 53 V., c. 33, s. 1.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

(*a.*) 'acceptance' means an acceptance completed by delivery or notification;

(*b.*) 'action' includes counter-claim and set off;

(*c.*) 'bank' means an incorporated bank or savings bank carrying on business in Canada;

(*d.*) 'bearer' means the person in possession of a bill or note which is payable to bearer;

(*e.*) 'bill' means bill of exchange, and 'note' means promissory note;

(*f.*) 'delivery' means transfer of possession, actual or constructive, from one person to another;

(*g.*) 'holder' means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof;

(*h.*) 'endorsement' means an endorsement completed by delivery;

(*i.*) 'issue' means the first delivery of a bill or note, complete in form, to a person who takes it as a holder;

(*j.*) 'value' means valuable consideration;

(*k.*) 'defence' includes counter-claim;

(*l.*) 'non-business days' means days directed by this Act to be observed as legal holidays or non-juridical days.

2. Any day other than as aforesaid is a business day.— 53 V., c. 33, ss. 2 and 91.

PART I.

GENERAL.

3. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not. — 53 V., c. 33, s. 89.

4. Where by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with

his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority. — 53 V., c. 33, s. 90.

5. In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. — 53 V., c. 33, s. 90.

6. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.—53 V., c. 33, s. 91.

7. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.—53 V., c. 33, s. 94.

8. Nothing in this Act shall affect the provisions of the Bank Act. — 53 V., c. 33, s. 95.

9. The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His late Majesty George III., intituled *An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, and the Act of the said Parliament passed in the seventeenth year of His said Majesty's reign, intituled *An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, shall not extend to or be in force in any province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders made or uttered therein. — 53 V., c. 33, s. 95.

10. The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes and cheques. — 54-55 V., c. 17, s. 8.

11. A protest of any bill or note within Canada, and any copy thereof as copied by the notary or justice of the peace, shall, in any action be *prima facie* evidence of presentation and dishonour, and also of service of notice of such presentation and dishonour, as stated in such protest or copy. — 53 V., c. 33, s. 93.

12. If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice, shall

be received in all courts, as *prima facie* evidence of such protest, notice and service.— 53 V., c. 33, s. 71.

13. No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed. — 53 V., c. 33, s. 51.

14. Every bill or note the consideration of which consists, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same is issued, the words *Given for a patent right.*

2. Without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration. — 53 V., c. 33, s. 30.

15. The endorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon, shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties. — 53 V., c. 33, s. 30.

16. Every one who issues, sells or transfers, by endorsement or delivery, any such instrument not having the words *Given for a patent right* printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of an indictable offence and liable to imprisonment for any term not exceeding one year, or to such fine, not exceeding two hundred dollars, as the court thinks fit. — 53 V., c. 33, s. 30.

PART II.

BILLS OF EXCHANGE.

Form of Bill and Interpretation.

17. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

2. An instrument which does not comply with the requisites aforesaid, or which orders any act to be done in

addition to the payment of money, is not, except as hereinafter provided, a bill of exchange.

3. An order to pay out of a particular fund is not unconditional within the meaning of this section: Provided that an unqualified order to pay, coupled with,—

(*a.*) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or,

(*b.*) a statement of the transaction which gives rise to the bill;

is unconditional. — 53 V., c. 33, s. 3.

18. An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

2. A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. — 53 V., c. 33, ss. 6 and 11.

19. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee .

2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

3. A bill may be made payable to the holder of an office for the time being. — 53 V., c. 33, ss. 5 and 7.

20. The drawee must be named or otherwise indicated in a bill with reasonable certainty. — 53 V., c. 33, s. 6.

21. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable.

2. A negotiable bill may be payable either to order or to bearer.

3. A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

4. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

5. Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer. — 53 V., c. 33, ss. 7 and 8.

22. A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

2. Where a bill, either or-

iginally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option.—53 V., c. 33, s. 8.

23. A bill is payable on demand,—

(*a.*) which is expressed to be payable on demand, or on presentation; or,

(*b.*) in which no time for payment is expressed.

2. Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand. — 53 V., c. 33, s. 10.

24. A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable,—

(*a.*) at sight or at a fixed period after date or sight;

(*b.*) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain. — 53 V., c. 33, s. 11; 54-55 V., c. 17, s. 1.

25. An inland bill is a bill which is, or on the face of it purports to be,—

(*a.*) both drawn and payable within Canada; or,

(*b.*) drawn within Canada upon some person resident therein.

2. Any other bill is a foreign bill.

3. Unless the contrary appears on the face of the bill, the holder may treat is as an inland bill.—53 V., c. 33, s. 4.

26. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. — 53 V., c. 33, s. 5.

27. A bill is not invalid by reason only,—

(*a.*) that it is not dated;

(*b.*) that it does not specify the value given, or that any value has been given therefor;

(*c.*) that it does not specify the place where it is drawn or the place where it is payable;

(*d.*) that it is antedated or postdated, or that it bears date on a Sunday or other non-juridical day. — 53 V., c. 33, ss. 3 and 13.

28. The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid,—

(*a.*) with interest;

(*b.*) by stated instalments;

(*c.*) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(*d.*) according to an indicated rate of exchange or according to a rate of ex-

change to be ascertained as directed by the bill.

2. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

3. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof. — 53 V., c. 33, s. 9.

29. Where a bill or an acceptance, or any endorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be. — 53 V., c. 33, s. 13.

30. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that,—

(*a.*) where the holder in good faith and by mistake inserts a wrong date; and,

(*b.*) in every other case where a wrong date is inserted;

if the bill subsequently comes into the hands of a holder in due course the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date. — 53 V., c. 33, s. 12; 54-55 V., c. 17, s. 2.

31. Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or acceptor, or an endorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. — 53 V., c. 33, s. 20.

32. In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given: Provided that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

2. Reasonable time within the meaning of this section

is a question of fact. — 53 V., c. 33, s. 20.

33. The drawer of a bill and any endorser may insert therein the name of a person, who shall be called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment.

2. It is in the option of the holder to resort to the referee in case of need or not as he thinks fit. — 53 V., c. 33, s. 15.

34. The drawer of a bill, and any endorser, may insert therein an express stipulation,—

(*a.*) negativing or limiting his own liability to the holder;

(*b.*) waiving, as regards himself, some or all of the holder's duties. — 53 V., c. 33, s. 16.

ACCEPTANCE AND INTERPRETATION.

35. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

2. Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature. — 53 V., c. 33, s. 17.

36. An acceptance is invalid unless it complies with the following conditions, namely:—

(*a.*) It must be written on the bill and be signed by the drawee;

(*b.*) It must not express that the drawee will perform his promise by any other means than the payment of money.

2. The mere signature of the drawee written on the bill without additional words is a sufficient acceptance. — 53 V., c. 33, s. 17.

37. A bill may be accepted,

(*a.*) before it has been signed by the drawer, or while otherwise incomplete;

(*b.*) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

2. When a bill payable at sight or after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.— 53 V., c. 33, s. 18; 54-55 V., c. 17, s. 3.

38. An acceptance is either,—

(*a.*) general; or,

(*b.*) qualified.

2. A general acceptance assents without qualification to the order of the drawer.

3. A qualified acceptance in express terms varies the effect of the bill as drawn

and in particular, an acceptance is qualified which is,—

(*a.*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

(*b.*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(*c.*) qualified as to time;

(*d.*) the acceptance of some one or more of the drawees, but not of all.

4. An acceptance to pay at a particular specified place is not on that account conditional or qualified. — 53 V., c. 33, s. 19.

39. Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto: Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. — 53 V., c. 33, s. 21.

DELIVERY.

40. As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery,—

(*a.*) in order to be effectual must be made either by or under the authority of the party drawing, accepting or endorsing, as the case may be;

(*b.*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

2. If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. — 53 V., c. 33, s. 21.

41. Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved. — 53 V., c. 33, s. 21.

COMPUTATION OF TIME, NON-JURIDICAL DAYS AND DAYS OF GRACE.

42. Where a bill is not payable on demand, three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that whenever the last day of grace falls on a legal holiday or non-juridical day in the province where any such bill is payable, then the day next following, not being a legal holiday or non-

juridical day in such province, shall be the last day of grace. — 53 V., c. 33, s. 14.

43. In all matters relating to bills of exchange, the following and no other days shall be observed as legal holidays or non-juridical days:—

(*a.*) In all the provinces of Canada,

Sundays,

1 New Year's Day,

2 Good Friday,

3 Easter Monday,

4 Victoria Day,

5 Dominion Day,

6 Labour Day,

7 Christmas Day,

The birthday (or the day fixed by proclamation for the 8 celebration of the birthday) of the reigning sovereign;

Any day appointed by proclamation for a public holi- 9 day, or for a general fast, or a general thanksgiving throughout Canada,

The day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday;

(*b.*) In the province of Quebec in addition to the said days,

10 The Epiphany,

11 The Ascension,

12 All Saint's Day,

13 Conception Day;

(*c.*) In any one of the provinces of Canada, any day appointed by proclamation of the Lieutenant-Governor of such province for a public holiday, or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such province. — 53 V., c. 33, s. 14; 56 V., c. 30, s. 1; 57-58 V., c. 55, s. 2; 1 E. VII., c. 12, ss. 2 and 4.

44. Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.—53 V., c. 33, s. 14.

45. Where a bill is payable at sight or at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery. — 53 V., c. 33, s. 14.

46. Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated, unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month, with the addition, in all cases, of the days of grace.

2. The term 'month' in a bill means the calendar month. — 53 V., c. 33, s. 14.

CAPACITY OR AUTHORITY OF PARTIES.

47. Capacity to incur liability as a party to a bill is co-extensive with capacity to contract: Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or endorser, of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation. — 53 V., c. 33, s. 22.

48. Where a bill is drawn or endorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. — 53 V., c. 33, s. 22.

49. Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: Provided that,—

(*a.*) nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery;

(*b.*) if a cheque payable to order is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery.

2. In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights. — 53 V., c. 33, s. 24.

50. If a bill bearing a forged or unauthorized endorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to

whom it was so paid or from any endorser who has endorsed the bill subsequently to the forged or unauthorized endorsement if notice of the endorsement being a forged or unauthorized endorsement is given to each such subsequent endorser within the time and in the manner in this section mentioned.

2. Any such person or endorser from whom said amount has been recovered shall have the like right of recovery against any prior endorser subsequent to the forged or unauthorized endorsement.

3. Such notice of the endorsement being a forged or unauthorized endorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given in the same manner, and if sent by post may be addressed in the same way, as notice of protest or dishonour of a bill may be given or addressed under this Act. — 60-61 V., c. 10, s. 1.

51. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority. — 53 V., c. 33, s. 25.

52. Where a person signs a bill as drawer, endorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

2. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. — 53 V., c. 33, s. 26.

CONSIDERATION.

53. Valuable consideration for a bill may be constituted by,—

(*a.*) any consideration sufficient to support a simple contract;

(*b.*) an antecedent debt or liability;

2. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time. — 53 V., c. 33, s. 27.

54. Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who be-

came parties prior to such time.

2. Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien. — 53 V., c. 33, s. 27.

55. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or endorser, without receiving value therefor and for the purpose of lending his name to some other person.

2. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.— 53 V., c. 33, s. 28.

56. A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

(*a.*) That he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact;

(*b.*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

2. In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. — 53 V., c. 33, s. 29.

57. A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. — 53 V., c. 33, s. 29.

58. Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

2. Every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course. — 53 V., c. 33, s. 30.

59. No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had at the time of its transfer to him actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract. — 53 V., c. 33, s. 30.

NEGOTIATION.

60. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

2. A bill payable to bearer is negotiated by delivery.

3. A bill payable to order is negotiated by the endorsement of the holder completed by delivery. — 53 V., c. 33, s. 31.

61. Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferrer had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferrer.

2. Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability. — 53 V., c. 33, s. 31.

62. An endorsement in order to operate as a negotiation,—

(*a.*) must be written on the bill itself and be signed by the endorser;

(*b.*) must be an endorsement of the entire bill.

2. An endorsement written on an allonge, or on a *copy* of a bill issued or negotiated in a country where *copies* are recognized, is deemed to be written on the bill itself.

3. A partial endorsement, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally, does not operate as a negotiation of the bill. — 53 V., c. 33, s. 32.

63. The simple signature of the endorser on the bill, without additional words, is a sufficient endorsement.

2. Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others. — 53 V., c. 33, s. 32.

64. Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own proper signature. — 53 V., c. 33, s. 32.

65. Where there are two or more endorsements on a bill, each endorsement is deemed

to have been made in the order in which it appears on the bill, until the contrary is proved. — 53 V., c. 33, s. 32.

66. Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid, whether the condition has been fulfilled or not. — 53 V., c. 33, s. 33.

67. An endorsement may be made in blank or special.

2. An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer.

3. A special endorsement specifies the person to whom, or to whose order, the bill is to be payable.

4. The provisions of this Act relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement.

5. Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person. — 53 V., c. 33, ss. 32 and 34.

68. An endorsement may also contain terms making it restrictive.

2. An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is endorsed 'Pay D only,' or 'Pay D for the account of X,' or 'Pay D, or order, for collection.'

3. A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorizes him to do so.

4. Where a restrictive endorsement authorizes further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement. — 53 V., c. 33, ss. 32 and 35.

69. Where a bill is negotiable in its origin, it continues to be negotiable until it has been,—

(*a.*) restrictively endorsed; or,

(*b.*) discharged by payment or otherwise. — 53 V., c. 33, s. 36.

70. Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it.

2. A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time.

3. What is an unreasonable length of time for such purpose is a question of fact.— 53 V., c. 33, s. 36.

71. Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. — 53 V., c. 33, s. 36.

72. Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this section shall affect the rights of a holder in due course. — 53 V., c. 33, s. 36.

73. Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable. — 53 V., c. 33, s. 37.

74. The rights and powers of the holder of a bill are as follows:—

(*a.*) He may sue on the bill in his own name;

(*b.*) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(*c.*) Where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and,

(*d.*) Where his title is defective if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill. — 53 V., c. 33, s. 38.

PRESENTMENT FOR ACCEPTANCE.

75. Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

3. In no other case is presentment for acceptance nec-

essary in order to render liable any party to the bill. — 53 V., c. 33, s. 39.

76. Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers. — 53 V., c. 33, s. 39.

77. Subject to the provisions of this Act, when a bill payable at sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

2. If he does not do so, the drawer and all endorsers prior to that holder are discharged.

3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. — 53 V., c. 33, s. 40; 54-55 V., c. 17, s. 5.

78. A bill is duly presented for acceptance which is presented in accordance with the following rules, namely:—

(*a.*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;

(*b.*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only;

(*c.*) Where the drawee is dead, presentment may be made to his personal representative;

(*d.*) Where authorized by agreement or usage, a presentment through the post office is sufficient. — 53 V., c. 33, s. 41.

79. Presentment in accordance with the aforesaid rules is excused, and a bill may be treated as dishonoured by non-acceptance,—

(*a.*) where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill;

(*b.*) where, after the exercise of reasonable diligence, such presentment cannot be effected;

(*c.*) where although the presentment has been irregular, acceptance has been refused on some other ground.

2. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse

presentment. — 53 V., c. 33, s. 41; 54-55 V., c. 17, s. 6.

80. The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter.

2. When a bill is so duly presented for acceptance and is not accepted within the time aforesaid, the person presenting it must treat it as dishonoured by non-acceptance.

3. If he does not so treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and endorsers.

4. In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days aforesaid but not later than the day of his actual acceptance of the bill.

5. If the acceptance is not so dated, the holder may refuse to take the acceptance and may treat the bill as dishonoured by non-acceptance. — 2 E. VII., c. 2, s. 1.

81. A bill is dishonoured by non-acceptance,—

(*a.*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or,

(*b.*) when presentment for acceptance is excused and the bill is not accepted. — 53 V., c. 33, s. 43.

82. Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary. — 53 V., c. 33, s. 43.

83. The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

2. When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto. — 53 V., c. 33, s. 44.

84. Where a qualified acceptance is taken, and the drawer or an endorser has not expressedly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill: Provided that this section shall not apply to a partial acceptance, whereof due notice has been given. — 53 V., c. 33, s. 44.

PRESENTMENT FOR PAYMENT.

85. Subject to the provisions of this Act, a bill must be duly presented for payment.

2. If it is not so presented, the drawer and endorsers shall be discharged.

3. Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment. — 53 V., c. 33, ss. 45 and 52.

86. A bill is duly presented for payment which is presented,—

(*a.*) when the bill is not payable on demand, on the day it falls due;

(*b.*) when the bill is payable on demand, within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable.

2. In determining what is a reasonable time within the meaning of this section regard shall be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case. — 53 V., c. 33, s. 45.

87. Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place as hereinafter defined, and either to the person designated by the bill as payer or to his representative or some person authorized to pay or to refuse payment on his behalf, if, with the exercise of reasonable diligence such person can there be found.

2. When a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

3. When the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative if such there is, and with the exercise of reasonable diligence, he can be found. — 53 V., c. 33, s. 45.

88. A bill is presented at the proper place,—

(*a.*) where a place of payment is specified in the bill or acceptance, and the bill is there presented;

(*b.*) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

(*c.*) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not at his ordinary residence, if known;

(*d.*) in any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence. — 53 V., c. 33, s. 45.

89. Where a bill is presented at the proper place as aforesaid and after the exercise of reasonable diligence, no person authorized to pay or refuse payment can there

be found no further presentment to the drawee or acceptor is required. — 53 V., c. 33, s. 45.

90. Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and if there is no such place of business or residence, the bill is presented at the post office, or principal post office in such city, town or village, such presentment is sufficient.

2. Where authorized by agreement or usage, a presentment through the post office is sufficient. — 53 V., c. 33, s. 45.

91. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.—53 V., c. 33, s. 46.

92. Presentment for payment is dispensed with,—

(*a.*) where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

(*b.*) where the drawee is a fictitious person;

(*c.*) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(*d.*) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented;

(*e.*) by waiver of presentment, express or implied.

2. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment. — 53 V., c. 33, s. 46.

93. When no place of payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable.

2. When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court.

3. When a bill is paid the holder shall forthwith del-

iver it up to the party paying it. — 53 V., c. 33, s. 52.

94. Where the address of the acceptor for honour of a bill is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity.

2. Where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

3. Delay in presentment or non-presentment is excused by any circumstance which would in case of acceptance by a drawee excuse delay in presentment for payment or non-presentment for payment. — 53 V., c. 33, s. 66.

DISHONOUR.

95. A bill is dishonoured by non-payment,—

(*a.*) when it is duly presented for payment and payment is refused or cannot be obtained; or,

(*b.*) when presentment is excused and the bill is overdue and unpaid.

2. Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and endorsers accrues to the holder. — 53 V., c. 33, s. 47.

96. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer, and each endorser, and any drawer or endorser to whom such notice is not given is discharged: Provided that,—

(*a.*) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission;

(*b.*) where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

2. In order to render the acceptor of a bill liable it is not necessary that notice of dishonour should be given to him. — 53 V., c. 33, ss. 48 and 52.

97. Notice of dishonour in order to be valid and effectual must be given,—

(*a.*) not later than the juridical or business day next following the dishonour of the bill;

(*b.*) by or on behalf of the holder, or by or on behalf of an endorser, who at the

time of giving it, is himself liable on the bill;

(*c.*) in the case of the death, if known to the party giving notice, of the drawer or endorser, to a personal representative, if such there is and with the exercise of reasonable diligence he can be found;

(*d.*) in case of two or more drawers or endorsers who are not partners, to each of them, unless one of them has authority to receive notice for the others. — 53 V., c. 33, s. 49.

98. Notice of dishonour may be given,—

(*a.*) as soon as the bill is dishonoured;

(*b.*) to the party to whom the same is required to be given, or to his agent in that behalf;

(*c.*) by an agent either in his own name or in the name of any party entitled to give notice whether that party is his principal or not;

(*d.*) in writing or by personal communication and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.

2. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. — 53 V., c. 33, s. 49.

99. In point of form,—

(*a.*) the return of a dishonoured bill to the drawer or an endorser is a sufficient notice of dishonour;

(*b.*) a written notice need not be signed.

2. An insufficient written notice may be supplemented and validated by verbal communication. — 53 V., c. 33, s. 49.

100. Where a bill when dishonoured is in the hands of an agent he may himself give notice to the parties liable on the bill, or he may give notice to his principal, in which case the principal upon receipt of the notice shall have the same time for giving notice as if the agent had been an independent holder.

2. If the agent gives notice to his principal he must do so within the same time as if he were an independent holder. — 53 V., c. 33, s. 49.

101. Where a party to a bill receives due notice of dishonour he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that a holder has after dishonour. — 53 V., c. 33, s. 49.

102. A notice of dishonour enures for the benefit,—

(*a.*) of all subsequent holders and of all prior endorsers who have a right of recourse against the party to whom it is given, where given on behalf of the holder;

(*b.*) of the holder and of all endorsers subsequent to

the party to whom notice is given, where given, by or on behalf of an endorser entitled under this Part to give notice. — 53 V., c. 33, s. 49.

103. Notice of the dishonour of any bill payable in Canada shall, notwithstanding anything in this Act contained be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place, in which case such notice shall be sufficiently given if addressed to him in due time at such other place.

2. Such notice so addressed shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which presentment has been made, or on the next following juridical or business day.

3. Such notice shall not be invalid by reason only of the fact that the party to whom it is addressed is dead. — 53 V., c. 33, s. 49.

104. Where a notice of dishonour is duly addressed and posted, as provided in the last preceding section, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office. — 53 V., c. 33, s. 49.

105. Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence.

2. When the cause of delay ceases to operate the notice must be given with reasonable diligence. — 53 V., c. 33. s. 50.

106. Notice of dishonour is dispensed with,—

(*a.*) when after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged;

(*b.*) by waiver express or implied.

2. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice. — 53 V., c. 33, s. 50.

107. Notice of dishonour is dispensed with as regards the drawer where,—

(*a.*) the drawer and drawee are the same person;

(*b.*) the drawee is a fictitious person or a person not having capacity to contract;

(*c.*) the drawer is the per-

son to whom the bill is presented for payment;

(*d.*) the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill;

(*e.*) the drawer has countermanded payment.—53 V., c. 33, s. 50.

108. Notice of dishonour is dispensed with as regards the endorser where,—

(*a.*) the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill;

(*b.*) the endorser is the person to whom the bill is presented for payment;

(*c.*) the bill was accepted or made for his accommodation. — 53 V., c. 33, s. 50.

PROTEST.

109. In order to render the acceptor of a bill liable it is not necessary to protest it.—53 V., c. 33, s. 52.

110. Protest is dispensed with by any circumstances which would dispense with notice of dishonour. — 53 V., c. 33, s. 51.

111. Delay in noting or protesting is excused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. — 53 V., c. 33, s. 51.

112. Where a foreign bill appearing on the face of it to be such has been dishonoured by non-acceptance it must be duly protested for non-acceptance.

2. Where a foreign bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment.

3. Where a foreign bill has been accepted only as to part it must be protested as to the balance.

4. If a foreign bill is not protested as by this section required the drawer and endorsers are discharged. — 53 V., c. 33, ss. 44 and 51.

113. Where an inland bill has been dishonoured, it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment as the case may be; but it shall not, except in the province of Quebec, be necessary to note or protest an inland bill in order to have recourse against the drawer or endorsers. — 53 V., c. 33, s. 51.

114. In the case of an inland bill drawn upon any person in the province of Quebec or payable or accepted at any place in the said province the parties liable on the said bill other than the acceptor are, in default of protest for non-acceptance or non-payment as the case

may be, and of notice thereof, discharged, except in cases where the circumstances are such as would dispense with notice of dishonour.

2. Except as in this section provided, where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary. — 53 V., c. 33, s. 51.

115. A bill which has been protested for non-acceptance, or a bill of which protest for non-acceptance has been waived, may be subsequently protested for non-payment. — 53 V., c. 33, s. 51.

116. Where the acceptor of a bill suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers. — 53 V., c. 33, s. 51; 54-55 V., c. 17, s. 7.

117. Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

2. When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him. — 53 V., c. 33, s. 66.

118. For the purposes of this Act, where a bill is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding. — 53 V., c. 33, s. 92.

119. Subject to the provisions of this Act, when a bill is protested the protest must be made or noted on the day of its dishonour.

2. When a bill has been duly noted, the formal protest may be extended thereafter at any time as of the date of the noting. — 53 V., c. 33, ss. 51 and 92.

120. Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof. — 53 V., c. 33, s. 51.

121. A bill must be protested at the place where it is dishonoured, or at some other place in Canada situate within five miles of the place of presentment and dishonour of such bill: Provided that,—

(*a.*) when a bill is presented through the post office and returned by post dishonoured, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical day;

(*b.*) every protest for dishonour, either for non-ac-

ceptance or non-payment may be made on the day of such dishonour, and in case of non-acceptance at any time after non-acceptance, and in case of non-payment at any time after three o'clock in the afternoon. — 53 V., c. 33, s. 51.

122. A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify,—

(*a.*) the person at whose request the bill is protested;

(*b.*) the place and date of protest;

(*c.*) the cause or reason for protesting the bill;

(*d.*) the demand made and the answer given, if any; or,

(*e.*) the fact that the drawee or acceptor could not be found. — 53 V., c. 33, s. 51.

123. Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any justice of the peace resident in the place may present and protest such bill and give all necessary notices and shall have all the necessary powers of a notary in respect thereto. — 53 V., c. 33, s. 93.

124. The expense of noting and protesting any bill and the postages thereby incurred, shall be allowed and paid to the holder in addition to any interest thereon.

2. Notaries may charge the fees in each province heretofore allowed them. — 53 V., c. 33, s. 93.

125. The forms in the schedule to this Act may be used in noting or protesting any bill and in giving notice thereof.

2. A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary changes in that behalf made in the forms. — 53 V., c. 33, s. 93.

126. Notice of the protest of any bill payable in Canada shall be sufficiently given and shall be sufficient and deemed to have been duly given and served, if given during the day on which protest has been made or on the next following juridical or business day, to the same parties and in the same manner and addressed in the same way as is provided by this Part for notice of dishonour. — 53 V., c. 33, s. 49.

LIABILITIES OF PARTIES.

127. A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. — 53 V., c. 33, s. 53.

128. The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance. — 53 V., c. 33, s. 54.

129. The acceptor of a bill by accepting it is precluded from denying to a holder in due course,—

(*a.*) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(*b.*) in the case of a bill payable to drawer's order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement;

(*c.*) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement. — 53 V., c. 33, s. 54.

130. The drawer of a bill, by drawing it,—

(*a.*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;

(*b.*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. — 53 V., c. 33, s. 55.

131. No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: Provided that when a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers. — 53 V., c. 33, ss. 23 and 56.

132. Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name.

2. The signature of the name of a firm is equivalent to the signature by the person so signing, of the names of all persons liable as partners in that firm. — 53 V., c. 33, s. 23.

133. The endorser of a bill, by endorsing it, subject to the effect of any express stipulation hereinbefore authorized,—

(*a.*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;

(*b.*) is precluded from denying to a holder in due course the genuineness and

regularity in all respects of the drawer's signature and all previous endorsements;

(*c.*) is precluded from denying to his immediate or a subsequent endorsee that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto. — 53 V., c. 33, s. 55.

134. Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be,—

(*a.*) the amount of the bill;

(*b.*) interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;

(*c.*) the expenses of noting and protest. — 53 V., c. 33, s. 57.

135. In case of the dishonour of a bill the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser, the damages aforesaid. — 53 V., c. 33, s. 57.

136. In the case of a bill which has been dishonoured abroad in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.—53 V., c. 33, s. 57.

137. Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a 'transferrer by delivery.'

2. A transferrer by delivery is not liable on the instrument. — 53 V., c. 33, s. 58.

138. A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value,—

(*a.*) that the bill is what it purports to be;

(*b.*) that he has a right to transfer it; and,

(*c.*) that at the time of transfer he is not aware of any fact which renders it valueless.—53 V., c. 33 s. 58.

DISCHARGE OF BILL.

139. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

2. Payment in due course means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

3. Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged. — 53 V., c. 33, s. 59.

140. Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser, it is not discharged; but,—

(*a.*) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(*b.*) where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill. — 53 V., c. 33, s. 59.

141. When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged. — 53 V., c. 33, s. 60.

142. When the holder of a bill, at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

2. The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.

3. A renunciation must be in writing, unless the bill is delivered up to the acceptor.

4. Nothing in this section shall affect the rights of a holder in due course without notice of renunciation. — 53 V., c. 33, s. 61.

143. Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

2. In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

3. In such case, any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged. — 53 V., c. 33, s. 62.

144. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: Provided that where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. — 53 V., c. 33, s. 62.

145. Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the

bill is voided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorsers: Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. — 53 V., c. 33, s. 63.

146. In particular any alteration,—

(*a.*) of the date;

(*b.*) of the sum payable;

(*c.*) of the time of payment;

(*d.*) of the place of payment;

(*e.*) by the addition of a place of payment without the acceptor's assent where a bill has been accepted generally;

is a material alteration. — 53 V., c. 33, s. 63.

ACCEPTANCE AND PAYMENT FOR HONOUR.

147. Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. — 53 V., c. 33, s. 64.

148. A bill may be accepted for honour for part only of the sum for which it is drawn. — 53 V., c. 33, s. 64.

149. Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. — 53 V., c. 33, s. 64.

150. Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honour. — 53 V., c. 33, s. 64.

151. An acceptance for honour *supra* protest, in order to be valid must,—

(*a.*) be written on the bill, and indicate that it is an acceptance for honour; and,

(*b.*) be signed by the acceptor for honour. — 53 V., c. 33, s. 64.

152. The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts.

2. The acceptor for honour

is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. — 53 V., c. 33, s. 65.

153. Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

2. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

3. Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

4. The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest.

5. If the holder does not on demand in such case deliver up the bill and protest, he shall be liable to the payer for honour in damages. — 53 V., c. 33, s. 67.

154. Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

2. The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. — 53 V., c. 33, s. 67.

155. Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. — 53 V., c. 33, s. 67.

LOST INSTRUMENTS.

156. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again.

2. If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.— 53 V., c. 33, s. 68.

157. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question. — 53 V., c. 33, s. 69.

BILL IN A SET.

158. Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

2. The acceptance may be written on any part, and it must be written on one part only. — 53 V., c. 33, s. 70.

159. Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills.

2. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill: Provided that nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

3. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

4. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

5. Subject to the provisions of this section, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. — 53 V., c. 33, s. 70.

CONFLICT OF LAWS.

160. Where a bill drawn in one country is negotiated, accepted or payable in another, the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance *supra* protest, is determined by the law of the place where the contract was made: Provided that,—

(*a.*) where a bill is issued out of Canada, it is not in-

valid by reason only that it is not stamped in accordance with the law of the place of issue;

(*b.*) where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada. — 53 V., c. 33, s. 71.

161. Subject to the provisions of this Act, the interpretation of the drawing, endorsement, acceptance or acceptance *supra* protest of a bill, drawn in one country and negotiated, accepted or payable in another, is determined by the law of the place where such contract is made: Provided that where an inland bill is endorsed in a foreign country, the endorsement shall, as regards the payer, be interpreted according to the law of Canada. — 53 V., c. 33, s. 71.

162. The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, are determined by the law of the place where the act is done or the bill is dishonoured. — 53 V., c. 33, s. 71.

163. Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. — 53 V., c. 33, s. 71.

164. Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. — 53 V., c. 33, s. 71.

PART III.

CHEQUES ON A BANK.

165. A cheque is a bill of exchange drawn on a bank, payable on demand.

2. Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.—53 V., c. 33, s. 72.

166. Subject to the provisions of this Act,—

(*a.*) where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such

drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;

(*b.*) the holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it.

2. In determining what is a reasonable time, within this section, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case. — 53 V., c. 33, s. 73.

167. The duty and authority of a bank to pay a cheque drawn on it by its customer, are determined by,—

(*a.*) countermand of payment;

(*b.*) notice of the customer's death. — 53 V., c. 33, s. 74.

CROSSED CHEQUES.

168. Where a cheque bears across its face an addition of,—

(*a.*) the word 'bank' between two parallel transverse lines, either with or without the words 'not negotiable'; or,

(*b.*) two parallel transverse lines simply, either with or without the words 'not negotiable';

such addition constitutes a crossing, and the cheque is crossed generally.

2. Where a cheque bears across its face an addition of the name of a bank, either with or without the words 'not negotiable,' that addition constitutes a crossing, and the cheque is crossed specially and to that bank.— 53 V., c. 33, s. 75.

169. A cheque may be crossed generally or specially by the drawer.

2. Where a cheque is uncrossed, the holder may cross it generally or specially.

3. Where a cheque is crossed generally, the holder may cross it specially.

4. Where a cheque is crossed generally or specially, the holder may add the words *Not negotiable.*

5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially to another bank for collection.

6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself.

7. A crossed cheque may be re-opened or uncrossed by the drawer writing between the transverse lines, the words *Pay cash,* and initialling the same. — 53 V., c. 33, s. 76.

170. A crossing authorized by this Act is a material part of the cheque.

2. It shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. — 53 V., c. 33, s. 78.

171. Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. — 53 V., c. 33, s. 78.

172. Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be. — 53 V., c. 33, s. 78.

173. Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.— 53 V., c. 33, s. 79.

174. Where a person takes a crossed cheque which bears on it the words 'not negotiable', he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. — 53 V., c. 33, s. 80.

175. Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has

no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment.—53 V., c. 33, s. 81.

PART IV.

PROMISSORY NOTES.

176. A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer.

2. An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker.

3. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. — 53 V., c. 33, s. 82.

177. A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note.

2. Any other note is a foreign note. — 53 V., c. 33, s. 82.

178. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer. 53 V., c. 33, s. 83.

179. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

2. Where a note runs 'I promise to pay,' and is signed by two or more persons, it is deemed to be their joint and several note.—53 V., c. 33, s. 84.

180. Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement.

2. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.—53 V., c. 33, s. 85.

181. If a promissory note payable on demand, which has been endorsed, is not presented for payment within a reasonable time the endorser is discharged: Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security.—53 V., c. 33, s. 85.

182. Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it ap-

pears that a reasonable time for presenting it for payment has elapsed since its issue.— 53 V., c. 33, s. 85.

183. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place.

2. In such case the maker is not discharged by the omission to present the note for payment on the day that it matures; but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court.

3. If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable.—53 V., c. 33, s. 86.

184. Presentment for payment is necessary in order to render the endorser of a note liable.

2. Where a note is in the body of it made payable at a particular place, presentment as that place is necessary in order to render an endorser liable.

3. When a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice. — 53 V., c. 33, s. 86.

185. The maker of a promissory note, by making it,—

(*a.*) engages that he will pay it according to its tenor;

(*b.*) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. — 53 V., c. 33, s. 87.

186. Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

2. In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

3. The provisions of this Act as to bills relating to,—

(*a.*) presentment for acceptance;

(*b.*) acceptance;

(*c.*) acceptance *supra* protest;

(*d.*) bills in a set;

do not apply to notes. — 53 V., c. 33, s. 88.

187. Where a foreign note is dishonoured, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers. — 53 V., c. 33, s. 88.

SCHEDULE.

FORM A.

NOTING FOR NON-ACCEPTANCE.

(COPY OF BILL AND ENDORSEMENTS.)

On the 19 , the above bill was, by me, at the request of , presented for acceptance to E. F., the drawee, personally (*or*, at his residence, office or usual place of business), in the city (town *or* village) of and I received for answer, " "; The said bill is therefore noted for non-acceptance.

A. B.,
Notary Public.

(*Date and Place.*) 19 .

Due notice of the above was by me served upon {A. B., / C. D.,} the {drawer, / endorser,} personally, on the day of (*or*, at his residence, office or usual place of business) in , on the day of (*or*, by depositing such notice, directed to him, at , in His Majesty's post office in the city [town *or* village], on the day of , and prepaying the postage thereon.)

A. B.,
Notary Public.

(*Date and Place.*) 19 .

53 V., c. 33, sch., form A.

FORM B.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE GENERALLY.

(COPY OF BILL AND ENDORSEMENTS.)

On this day of , in the year 19 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the {drawee / acceptor} thereof personally (*or*, at his residence, office *or* usual place of business) in , and, speaking to himself (*or* his wife, his clerk, *or* his servant, &c.,) did demand {acceptance / payment} thereof; unto which demand {he / she} answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (*or* drawer and endorsers) of the said bill, and other parties thereto or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want

of {acceptance / payment} of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch., form B.

FORM C.

PROTEST FOR NON-ACCEPTANCE OR FOR NON-PAYMENT OF A BILL PAYABLE AT A STATED PLACE.

(COPY OF BILL AND ENDORSEMENTS.)

On this day of , in the year 19 , I, A. B., notary public for the Province of , dwelling at in the Province of at the request of , did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the {drawee / acceptor} thereof, at , being the stated place where the said bill is payable, and there, speaking to did demand {acceptance / payment} of the said bill; unto which demand he answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (*or* drawer and endorsers) of the said bill, and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages and interests, present and to come, for want of {acceptance / payment} of the said bill.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch., form C.

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED, FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words "and afterwards on, &c.," *continuing as in the last preceding form, but introducing between the words* "did" *and* "exhibit," *the word* "again," *and, in a parenthesis, between the words* "written" *and* "unto," *the words :* "and which bill was by me duly noted for non-acceptance on the day of ."

But if the protest is not made by the same notary, then it should follow a copy of the original bill and endorsements and noting marked on the bill—and then in the protest

introduce, in a parenthesis, between the words "written" *and* "unto," *the words:* "and which bill was on the day of , by , notary public for the Province of , noted for non-acceptance, as appears by his note thereof marked on the said bill."

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(COPY OF NOTE AND ENDORSEMENTS.)

On this day of , in the year 19 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, personally (*or*, at his residence, office *or* usual place of business), in , and speaking to himself (*or* his wife, his clerk (*or* his wife, did demand payment thereof; unto which demand {she / he} answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch., form E.

FORM F.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE AT A STATED PLACE.

(COPY OF NOTE AND ENDORSEMENTS.)

On this day of , in the year 19 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, at , being the stated place where the said note is payable, and there, speaking to did demand payment of the said note, unto which demand he answered: " ."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.

(Protested in duplicate.)

A. B.,
Notary Public.

FORM G.

NOTARIAL NOTICE OF A NOTING, OR OF A PROTEST FOR NON-ACCEPTANCE, OR OF A PROTEST FOR NON-PAYMENT OF A BILL.

(PLACE AND DATE OF NOTING OR OF PROTEST.)

1st.

To P. Q. (*the drawer*),
at

Sir,

Your bill of exchange for $, dated at the , upon E. F., in favor of C. D., payable days after {sight, / date} was this day, at the request of duly {noted / protested} by me for {non-acceptance. / non-payment.}

A. B.,
Notary Public.

53 V., c. 33, sch., form F.

(PLACE AND DATE OF NOTING OR OF PROTEST.)

2nd.

To C. D. (*endorser*),
(*or* F. G.)
at

Sir,

Mr. P. Q.'s bill of exchange for $, dated at , the , upon E. F., in your favor (*or* in favor of C. D.,) payable days after {sight, / date, and by} you endorsed, was this day, at the request of duly {noted / protested} by me for {non-payment. / non-acceptance.}

A. B.,
Notary Public.

FORM H.

NOTARIAL NOTICE OF PROTEST FOR NON-PAYMENT OF A NOTE.

Code Civil 263

(PLACE AND DATE OF PROTEST.)

To ,
at

Sir,

Mr. P. Q.'s promissory note for $, dated at , the day of payable {days / months / on——} after date to {you / E. F.} or order, and endorsed by you, was this day, at the request of , duly protested by me for non-payment.

A. B.,
Notary Public.

53 V., c. 33, sch., form H.

FORM I.

NOTARIAL SERVICE OF NOTICE OF A PROTEST FOR NON-ACCEPTANCE OR NON-PAYMENT OF A BILL, OR OF NON-PAYMENT OF A NOTE (*to be subjoined to the Protest.*)

And afterwards, I, the aforesaid protesting notary public, did serve due notice, in the form prescribed by

law, of the foregoing protest for {non-acceptance / non-payment} of the {bill / note} thereby protested upon {P. Q., / C. D.,} the {drawer / endorsers} personally, on the day of (*or*, at his residence, office *or* usual place of business) in , on the day of ; (*or*, by depositing such notice, directed to the said {P. Q., / C. D.} at , in His Majesty's post office in , on the day of , and prepaying the postage thereon).

In testimony whereof, I have, on the last mentioned day and year, at aforesaid, signed these presents.

A. B.,
Notary Public.

53 V., c. 33, sch., form I.

FORM J.

PROTEST BY A JUSTICE OF THE PEACE (WHERE THERE IS NO NOTARY) FOR NON-ACCEPTANCE OF A BILL, OR NON-PAYMENT OF A BILL OR NOTE.

(COPY OF BILL OR NOTE AND ENDORSEMENTS).

On this day of, in the year 19 , I, N. O., one of His Majesty's justices of the peace for the district (*or* county, &c.), of , in the Province of , dwelling at (*or* near) the village of , in the said district, there being no practising notary public at or near the said village (*or any other legal cause*), did, at the request of and in the presence of well known unto me, exhibit the original {bill / note} whereof a true copy is above written unto P. Q., the {drawer / acceptor / promisor} thereof, personally (*or* at his residence, office *or* usual place of business) in , and speaking to himself (his wife, his clerk *or* his servant, &c.), did demand {acceptance / payment} thereof, unto which demand {he / she} answered: " ."

Wherefore I, the said justice of the peace, at the request aforesaid, have protested, and by these presents do protest against the {drawer and endorsers / promisor and endorsers / acceptor, drawer and endorsers} of the said {bill / note} and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of {acceptance / payment} of the said {bill. / note.}

All which is by these presents attested by the sign-

ature of the said (*the witness*) and by my hand and seal. (Protested in duplicate.)	*(Signature of the witness.)* *(Signature and seal of the J. P.)* 53 V., c. 33, sch., form J.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Province and Chapter.	Title of Act and extent of repeal.
Dominion of Canada: Chap. 123, Revised Statutes.	An Act respecting Bills of Exchange and Promissory Notes.—The whole Act.
Province of Quebec: Civil Code of Lower Canada	Articles 2,279 to 2,354 both inclusive. [*]
Nova Scotia: Revised Statutes, third series, chap. 82	"Of Bills of Exchange and Promissory Notes." Section 2. The other sections of this chapter have been heretofore repealed.
New Brunswick: Revised Statutes, chap. 116.	"Of Bills, Notes and Choses in Action." Section 2. The other sections of this chapter have been heretofore repealed.
30 Vict., 1867, chap. 34.	An Act to amend chap. 116 of the Revised Statutes. "Of Bills, Notes and Choses in Action;" also Act 12th Victoria, chapter 39, relating thereto. Section 1.

[*Except in so far as such articles, or any of them, relate to evidence in regard to bills of exchange, cheques and promissory notes.]

2340. In all matters relating to bills of exchange not provided for in this Code or in the Federal laws, recourse must be had to the laws of England in force on the thirtieth day of May, one thousand eight hundred and forty-nine. — R. S. Q. 6251; B. N. A. act, 1867, ss. 91 and 92.

2341. In the investigation of facts, in actions or suits founded on bills of exchange drawn or endorsed either by traders or other persons, recourse must be had to the laws of England in force at the time specified in the last preceding article, and no additional or different evidence is required or can be adduced by reason of any party to the bill not being a trader.

2342. The parties in the actions or suits specified in the last preceding article may be examined under oath as provided in the title *Of Obligations.*

2346. The provisions concerning bills of exchange contained in this title apply to promissory notes when they relate to the following subjects, viz:

1. The indication of the payee;
2. The time and place of payment;
3. The expression of value;
4. The liability of the parties;
5. Negotiation by endorsement or delivery;
6. Presentment and payment;
7. Protest for non-payment and notice;
8. Interest, commission, or usury;
9. The law and the rules of evidence to be applied;
10. Prescription.

2354. In the absence of special provisions in this section, cheques are subject to the rules concerning inland bills of exchange in so far as their application is consistent with the usage of trade.

TITLE SECOND.

OF MERCHANT SHIPPING.

2355. Subject to the provisions of the following paragraph, the law of the Imperial parliament, respecting merchant shipping, contains provisions concerning British ships in the province of Quebec, in all matters to which such provisions extend and are applicable therein.

The following Federal laws contain provisions concern-

ing ships, in all matters regulated by such laws:

1. The law respecting the registration and classification of shipping;

2. The law respecting the shipping of seamen;

3. The law respecting the shipping of seamen on inland waters;

4. The law respecting wrecks, casualties and salvage;

5. The law respecting the safety of ships and the prevention of accidents on board thereof;

6. The law respecting the navigation of Canadian waters;

7. The law respecting the liability of carriers by water;

8. The law respecting the coasting trade of Canada. — R. S. Q., 6254; R. S. C., 1906, c. 113.

CHAPTER FIRST.

OF THE REGISTRATION OF SHIPS.

2356. The registration of British ships, when necessary, is effected in the manner and according to the rules and forms prescribed in the laws for that purpose mentioned in the preceding article. — R. S. Q. 6255; R. S. C., 1906, c. 113.

2357. Every ship, propelled either wholly or in part by steam whatever her tonnage, as well as every ship not propelled wholly or in part by steam, of more than ten tons burthen, and having a whole or fixed deck, although otherwise by law deemed to be a British ship, shall, to be recognized as a British ship and to be admitted to the privileges of a British ship in Canada, be registered in the manner and according to the formalities prescribed in the Federal law respecting the registration and classification of ships.

2. The owner of a vessel, not being a ship within the meaning of the preceding paragraph, must obtain a license from the officer authorized to grant the same; the whole in the manner and under the conditions prescribed in the above mentioned Federal act. — R. S. Q. 6256; R. S. C., 1906, c. 113.

2358. The special rules concerning the measurement of vessels of the description mentioned in the preceding article, concerning builders' certificates, change of masters and change in the name of such vessels, certificates of registration and endorsement thereof, permits and those concerning the powers and duties of collectors and other officers in relation thereto are contained in the Federal act above referred to. — R. S. Q., 6256; R. S. C., 1906, c. 113.

CHAPTER SECOND.

OF THE TRANFER OF REGISTERED VESSELS.

2359. The transfer of registered British ships can be made only by a bill of sale, executed in the presence of one or more witnesses containing the recital specified in the Imperial law respecting merchant shipping, and entered in the book of registry of ownership in the manner in the said law prescribed.

The rules respecting the persons qualified to make and receive such transfers and respecting the registry and certificate of ownership and priority of right, are contained in the said law. — R. S. Q., 6257; R. S. C., cc. 62 and 120, s. 52.

2360. The transfer of ships registered in Canada is effected in accordance with the provisions of the preceding article. — R. S. Q., 6258; R. S. C., c. 72.

2361. Transfers of ships or vessels, of the description specified in articles 2359 and 2360, not made and registered in the manner therein prescribed, do not convey to the purchaser any title or interest in the ship or vessel intended to be sold. — R. S. Q., 6259; R. S. C., c. 72.

2362. *Repealed by* 36 *V., C., c.* 128.—R. S. Q., 6260.

2363. *Ibid.*

2364. *Ibid.*

2365. *Ibid.*

2366. *Ibid.*

2367. *Ibid.*

2368. *Ibid.*

2369. *Ibid.*

2370. *Ibid.*

2371. *Ibid.*

2372. *Ibid.*

2373. Vessels built in this province may also be transferred in security for loans in the manner declared in the next following chapter.

CHAPTER THIRD.

OF THE MORTGAGE AND HYPOTHECATION OF VESSELS.

2374. The rules concerning the hypothecation of vessels by contract of bottomry are contained in the title *Of Bottomry and Respondentia.*

The mortgage and hypothecation of registered British ships are made according to the provisions contained in the Imperial law respecting Merchant Shipping. — R. S. Q. 6261; R. S. C., c. 72.

2375. Vessels being built in Canada may be mortgaged, hypothecated or transferred under the authority of the Federal acts respecting the registration and classification of ships and respecting banks and banking, according to the rules laid down in the following articles of this chapter. — R. S. Q. 6262; R. S. C., c. 72 and c. 120, s. 52.

2376. The owner of a ship about being built or being built may, after having recorded her according to law, give her as security for a loan and other valuable consideration. — R. S. Q. 6262; R. S. C., 1906, c. 113, s. 39 et s.

2376*a*. The entry, in the record book of the port in which the ship is registered, of the instrument constituting the mortgage gives effect to such instrument and establishes the rank of the mortgage and hypothec. — R. S. Q., 6262; R. S. C., 1906, c. 113, s. 39 et s.

2376*b*. The mortgage is extinguished by the production of the instrument creating it, with an indorsement thereon showing the absolute payment of the debt for which the mortgage was given, and by an entry in the record book to the effect that such mortgage has been discharged. — R. S. Q. 6262; R. S. C., 1906, c. 113, s. 43.

2377. If two or more mortgages are recorded respecting the same ship, the hypothecary creditors, notwithstanding any express, implied or constructive notice, are entitled to priority one over the other, according to the date at which each instrument is recorded in the record book and not according to the date of each instrument. — R. S. Q. 6262; R. S. C., 1906, c. 113, s. 44.

2377*a*. A mortgage creditor is not, by reason of his mortgage, deemed to be the owner of a ship, nor is the hypothecary debtor deemed to have ceased to be the owner of such ship, except in so far as is necessary for making such ship available as security for the mortgage debt. — R. S. Q. 6262; R. S. C., c. 72, s. 36; R. S. C., 1906, c. 113, s. 45.

2378. Every mortgagee may absolutely dispose of the ship in respect of which he is recorded as such mortgagee and give effectual receipts for the purchase price; but if there are several persons recorded as mortgagees of the same ship, no subsequent mortgagee thereof can, except under the order of a competent court, sell such ship without the concurrence of the prior mortgagees.

The registration of bills of sale is made according to the Federal act respecting the registration and classification of ships. — R. S. Q. 6262; R. S. C., 1906, c. 113, s. 46, 47, 48.

2379. A recorded mortgage of any ship may be transferred by the mortgagee to any other person, and the instrument effecting such transfer must be made and recorded according to the Federal act respecting the registration and classification of ships. — R. S. Q. 6262; R. S. C., 1906, c. 113, s. 50.

2379*a*. If the interest of any mortgagee in a registered ship is transmitted in consequence of death or insolvency, or in consequence of the marriage of a female mortgagee, or by any lawful means other than by a transfer made under the Federal act respecting the registration and classification of ships, such transmission is authenticated by a declaration of the person to whom such interest has been transmitted, made in accordance with the provisions of the act last above mentioned. — R. S. Q., 6262; R. S. C., 1906, c. 113, s. 51.

2380. Every contract made under article 2375 and the acts therein mentioned may be executed in the usual form of contracts executed in this Province. — R. S. Q., 6262; R. S. C., 1906, c. 113, s. 62.

2381. Whenever the building of a ship, which has been recorded according to law, is duly completed, the first mortgagee, whose claim is unsatisfied, may, on furnishing the builder's certificate, secure from the proper officer a certificate of registry according to law.

2. The undischarged mortgages recorded according to law are transferred and registered in the order and according to the priority in which they were recorded.

3. The registry of all such mortgages shall thus appear according to their priority in the record books as if they had been made or granted under the laws providing for the giving of such certificates of registry.

A fresh instrument of mortgage, according to any form prescribed by law, may be granted as a substitute for any mortgage given under article 2375. — R. S. Q. 6262; R. S. C., 1906, c. 113, s. 55, 56, 57.

2382. The provisions contained in the foregoing articles of this chapter do not deprive the proprietor of any right of action to account or any recourse by law allowed against the person or bank making the advances. — R. S. Q., 6262; R. S. C., c. 72, s. 47 and c. 120, s. 52.

CHAPTER FOURTH.

OF PRIVILEGE AND MARITIME LIEN UPON VESSELS AND UPON THEIR CARGO AND FREIGHT.

2383. There is a privilege upon vessels for the payment of the following debts:—

1. The costs of seizure and sale, according to article 1995;

2. Pilotage, wharfage, and harbor dues, and penalties for the infraction of lawful harbour regulations;

3. The expense of keeping the vessel and rigging, and of repairing the latter since the last voyage;

4. The wages of the master and crew for the last voyage;

5. The sums due for repairing and furnishing the ship on her last voyage, and for merchandise sold by the captain for the same purpose;

6. Hypothecations upon the ship, according to the rules declared in the third chapter of this title and in the title *Of Bottomry and Respondentia.*

7. Premiums of insurance upon the ship for the last voyage;

8. Damages due to freighters for not delivering the goods shipped by them, and in reimbursement for injury caused to such goods by the fault of the master or crew.

If the ship sold have not yet made a voyage, the seller, the workmen employed in building and completing her, and the persons by whom the materials have been furnished, are paid by preference to all creditors, except those for debts enumerated in paragraphs 1 and 2.

2384. A ship's husband, or other agent, holding the ship's papers, has a lien upon them for advances and charges due for the management of the business of the ship.

2385. The following debts are paid by privilege upon the cargo:

1. Costs of seizure and sale;

2. Wharfage;

3. Freight upon the goods, according to the rules declared in the title *Of Affreightment,* and what is due for the passage of the owner;

4. Loans upon respondentia;

5. Premiums of insurance upon the things insured.

2386. The following debts are paid by privilege upon the freight:

1. The cost of seizure and distribution;

2. The wages of the master and of the seamen and others employed in the vessel;

3. Loans on bottomry according to the rules contained in the title *Of Bottomry and Respondentia.*

2387. The order of privileges declared in the foregoing articles is without prejudice to claims for damage by collision, or for average contributions, or for salvage, which are paid by privilege after the debts enumerated as 1, 2, in articles, 2383 and 2385, and before or after other privileged debts, according to the circumstances under which the claim has arisen, and the usage of trade.

2388. The provisions contained in this chapter do not apply in cases before the Court of Vice-Admiralty.

Cases in that Court are determined according to the civil and maritime laws of England.

CHAPTER FIFTH.

OF OWNERS, MASTERS AND SEAMEN.

2389. The owners, or a majority of them, appoint the master and may discharge him without assigning any cause unless it is otherwise specially agreed.

2390. The owners are civilly responsible for the acts of the master in all matters which concern the ship and voyage and for damages caused by his fault or the fault of the crew.

They are responsible in like manner for the acts and faults of any person lawfully substituted to the master.

The whole nevertheless subject to the provisions contained in this chapter and in the titles *Of Affreightment*, *Of Bottomry and Respondentia*, and in Imperial and Federal acts respecting merchant shipping. — R. S. Q., 6263; R. S. C., 1906, c. 113.

2391. Any person who hires a vessel to have the exclusive control and navigation of it, is held to be the owner from the time of such hiring, with the rights and liabilities of an owner as respects third persons.

2392. In matters of common interest to the owners concerning the equipment and management of the vessel, the opinion of the majority in value governs, unless there is an agreement to the contrary.

If there be an equal division on the question whether the ship shall be employed or not, the opinion in favor of employment prevails; saving, in both cases, to the owners who object the right to claim exemption from liability, and indemnity according to the circumstances and the discretion of a competent court.

2393. The sale of a ship by licitation cannot be ordered unless it is demanded by the owners of at least one half of the total interest in the ship, save in the case of an agreement to the contrary.

2394. The general powers of the master to bind the owner of the ship personally, and their mutual obligations toward each other are governed by the rules contained in the title *Of Lease and Hire*, and in the title *Of Mandate*, respectively.

2395. The master is personally liable to third persons for all obligations contracted by him respecting the ship, unless by express terms the credit is given to the owners only.—C. 1715.

2396. The master engages the crew for the ship. This he does nevertheless in concert with the owners or ship's husband when they are present at the place.

2397. The master is bound to see that the ship is prop-

erly furnished and prepared for the voyage, but if the owners or ship's husband be present at the place, the master cannot, without special authority, cause extraordinary repairs to be made upon the ship, or buy sails, cordage or provisions for the voyage, nor borrow money for that purpose; subject to the exception contained in article 2604.

2398. He is bound to sail on the day appointed and to pursue his voyage without deviation or delay, subject to the conditions contained in the title *Of Affreightment*.

2399. He may, during the voyage, in cases of necessity borrow money or, if that be impossible, sell part of the cargo to repair the ship or to supply her with provisions or other necessary things.

2400. He cannot sell the ship without special authority from the owners, except in case of inability to prosecute the voyage, and manifest and urgent necessity for the sale.

2401. The master has all the authority over the seamen and other persons in the ship including the passengers, which is necessary for its safe navigation, management and preservation, and for the maintenance of good order.

2402. He may throw over board a part or the whole of the cargo in cases of imminent danger and when necessary for the preservation of the ship.

2403. The rights, powers and obligations of the owners and of the master with respect to the ship and cargo are further declared in the titles *Of Affreightment* and *Of Insurance*.

The rules concerning the master's powers to hypothecate the ship or cargo are declared in the titles *Of Bottomry* and *Respondentia*.

2404. The special duties of masters, with respect to the keeping of official log-books and in other matters not herein provided for, the engagement and treatment of seamen, the payment and disposal of their wages and their discharge are regulated by the provisions contained respectively in the Imperial law respecting merchant shipping and in the Federal acts respecting the shipping of seamen. — R. S. Q. 6264; R. S. C., 1906, c. 113, s. 126 et s.

2405. Wages not exceeding two hundred dollars due to any seamen for service in a vessel registered in Canada may be recovered in a summary manner before any judge of the Superior Court, any judge of the sessions of the peace, any stipendiary magistrate, any police magistrate, or any two justices of the peace, in the manner and according to the rules prescribed in the Federal acts respecting the engage-

ment of seamen. — R. S. Q. 6264; R. S. C., 1906, c. 113.

2406. Prescription does not begin to run against the claim of seamen for their wages until after the expiration of the voyage.

TITLE THIRD.

OF AFFREIGHTMENT.

CHAPTER FIRST.

GENERAL PROVISIONS.

2407. Contracts of affreightment are either by charter-party, or for the conveyance of goods in a general ship.

2408. The contract may be made by the owner or the master of the ship or by the ship's husband as agent of the former.

If made by the master, it binds himself, and also the owner of the ship; unless it is made at a place where the owner or ship's husband is present, and they disavow the contract, in which case it binds the master only.

If the ship be hired by a party who sublets it, he is subject in contracts of affreightment to the same rules as if he were owner.

2409. The ship, with her equipments, and the freight are bound to the performance of the obligations of the lessor, and the cargo to the performance of the obligations of the lessee, or freighter.

2410. If before the department of the vessel there be a declaration of war or interdiction of trade with the country to which she is destined, or by reason of any other event of irresistible force, the voyage cannot be prosecuted, the contract is dissolved, without either party being liable in damages.

The expense of loading and unloading the cargo is borne by the freighter.

2411. If the port of destination be closed, or the ship detained by irresistible force, for a time only, the contract subsists and the master and freighter are mutually bound to await the opening of the port and the liberation of the ship; without either of them being entitled to damages. The rule applies equally if the obstruction arise during the voyage; and no increase of freight can be demanded.

2412. The freighter may

nevertheless unload the goods during the detention of the ship for the causes stated in the last preceding article; subject to the obligation of reloading after the obstruction has ceased, or of indemnifying the lessor for the full freight; unless the goods are of a perishable nature and cannot be replaced, in which case freight is due only to the place of the discharge.

2413. Contracts of affreightment and the obligations of the parties under them, are subject to the rules relating to carriers contained in the title *Of Lease and Hire*, when these are not inconsistent with the articles of this title.

CHAPTER SECOND.

OF CHARTER-PARTY.

2414. Affreightment by charter-party may be either of the whole ship or of some principal part of it, and for a determined voyage or a specified time.

2415. The charter-party, or memorandum of charter-party, usually specifies the name and burden of the ship, with a stipulation that she is tight and staunch and well furnished and equipped for the voyage. It also contains stipulations as to the time and place of loading, the day of sailing, the rate and payment of freight, and the conditions of demurrage, with a declaration of the fortuitous events which exempt the lessor from liability, and such other covenants as the parties may see fit to add.

2416. If the time of loading and unloading the ship, and the demurrage be not agreed upon, they are regulated by usage.

2417. When goods are put on board of a ship in pursuance of a charter-party the master signs a bill of lading for them to the effect mentioned in article 2420.

2418. If the whole of the ship be leased, but it be not wholly loaded by the lessee, the master cannot receive other cargo without his consent; in case of any other cargo being received the lessee is entitled to the freight of it.

CHAPTER THIRD.

OF THE CONVEYANCE OF GOODS IN A GENERAL SHIP.

2419. The contract for the conveyance of goods in a general ship is that by which the master or the owner of a ship destined for a particular voyage engages separately with various persons, unconnected with each other, to convey their respective goods according to the bill of lading to the place of their destination, and there to deliver them.

CHAPTER FOURTH.

OF THE BILL OF LADING.

2420. The bill of lading is signed and delivered by the master or purser, in three or more parts, of which the master retains one; the freighter also keeps one, and sends one to the consignee.

Besides the names of the parties and of the ship, it states the nature and quantity of the goods shipped, with their marks and numbers in the margin, and the place of their delivery, the name of the consignee, the place of shipping and of ship's destination, with the rate and manner of payment of the freight, and primage and average.

2421. When by the bill of lading the delivery of the goods is to be made to a person named or to his assigns, such person may transfer his right by endorsement and delivery of the bill of lading, and the ownership of the goods and all rights and liabilities in respect thereof are held to pass thereby to the indorsee; subject nevertheless to the rights of third persons.

2422. The freighter or lessee upon the signing and delivery to him of the bill of lading, is bound to return the receipts given by the master for the goods shipped. The bill of lading, in the hands of a consignee or endorsee, is conclusive evidence against the party signing it; unless there is fraud, of which the holder is cognizant.

CHAPTER FIFTH.

OF THE OBLIGATIONS OF THE OWNER OR LESSOR AND OF THE MASTER.

2423. The lessor is obliged to provide a vessel of the stipulated burthen, tight and staunch, furnished with all tackle and apparel necessary for the voyage, and with a competent master and a sufficient number of persons of skill and ability to navigate her, and so to keep her to the end of the voyage. The master is obliged to take on board a pilot, when by the law of the country one is required.

2424. The master is obliged to receive the goods, and carefully arrange and stow them in the ship, and to sign such bills of lading as may be required by the freighter or lessee, according to article 2420, upon receiving from him the receipts given for the goods.

2425. The goods must not be stowed on deck without the consent of the freighter, unless in a particular trade or in inland or coasting voyages, where there is an established usage to that effect. If

without such consent or usage the goods be so stowed and are lost by peril of the sea the master is personally liable.

2426. The ship must sail on the day fixed by the contract, or, if no day be fixed, within a reasonable time, according to circumstances and usage; and must proceed to her destination without deviation. If by the fault of the master the ship be delayed in her departure, or during the voyage, or at the place of discharge, or any loss or injury occur, he is liable in damages.

2427. The master is obliged to exercise all needful care of the cargo, and, in case of wreck, or other obstruction to the voyage by a fortuitous event or irresistible force, he is obliged to use the diligence and care of a prudent administrator for the preservation of the goods, and for their conveyance to the place of destination, and for that purpose to engage another ship, if it be necessary.

2428. On the completion of the voyage, and after due compliance with the laws and regulations of the port, the master is obliged to deliver the goods without delay to the consignee or his assignee, on production of the bill of lading and payment of the freight and other charges due in respect of it.

2429. The goods must be delivered in conformity with the terms of the bill of lading, and according to the law or usage observed in the place of delivery.

2430. Whenever any vessel has arrived at its destination in any port in Lower Canada, and the master thereof has notified the consignee, either by public advertisements or otherwise, that such cargo has reached the place designated in the bill of lading, such consignee is bound to receive the same within twenty-four hours after notice; and thereafter such cargo, so soon as placed on the wharf, is at the risk and charges of the consignee or owner.

2431. The time allowed for the discharge of cargoes consisting of certain kinds of merchandise is regulated by the laws respecting the discharging of cargoes of vessels. — R. S. Q., art. 6265; R. S. C., c. 90.

2432. Neither the owner nor master is exempt from liability for loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of the ship. — R. S. Q., art. 6266; R. S. C., c. 80, s. 57.

2433. The owner of a sea-going ship is not liable for the loss or damage, occasioned to any goods, wares, merchandise and article of any kind on board any such vessel or delivered to him

* 4 M.S.Cas. (113-2 S.C.)

for conveyance therein, without his actual fault or privity or the fault or neglect of his agents, servants or employees:

1. By reason of fire or the dangers of navigation;

2. By reason of any defect in, or the nature of the goods themselves, or from armed robbery or other irresistible force; or

3. By reason of any robbery, theft, embezzlement, removal or secreting of any gold, silver, diamonds, watches, jewels or precious stones, money or valuable securities or articles of great value, not being ordinary merchandise, unless the true nature and value thereof have, at the time of their delivery for conveyance, been declared by the owner or shipper thereof to the carrier or agent or servant and entered in the bill of lading, or otherwise in writing. — R. S. Q., 6267; R. S. C., c. 82, ss. 1 and 2 § 4.

2434. In any case of loss of life or personal injury, damage or loss to anything on board of a sea-going ship without any actual fault or privity on the part of the owner of the vessel on board of which or through the fault of which the loss happened, such owner is not responsible for the damage or the loss occasioned to an amount exceeding the sum of thirty-eight dollars and ninety-two cents per ton of the ship's registered tonnage in the case of sailing vessels, and of the gross tonnage, without deduction for the engine room, in the case of steam vessels.

The owner, however, remains always responsible in the same manner, for every such loss and damage arising on distinct occasions to the same extent as if no other loss or damage had arisen.— R. S. Q., 6268; R. S. C., c. 79, s. 12.

2435. *This article is without effect owing to the provisions of the Federal act respecting the navigation of Canadian waters.* — R. S. Q., 6269 and R. S. C., 1906, c. 113, s. 920, 921.

2436. The provisions contained in articles 2433 and 2434 do not apply to any master or seaman, being also owner or part owner of the ship to which he belongs, to take away or lessen the liability to which he is subject in his capacity of master or seaman.

CHAPTER SIXTH.

OF THE OBLIGATIONS OF THE LESSEE.

SECTION I.

GENERAL PROVISIONS.

2437. The principal obligations of the lessee are:

1. To load the ship with the stipulated cargo, and within the time specified by the contract, or, if no time be specified, within a reasonable delay;

2. To pay the freight with primage and average, and demurrage when any is due.

2438. The lessee cannot put on board any prohibited or uncustomed goods, by which the ship may be subjected to detention or forfeiture, or goods of a dangerous nature, without notice to the master or owner.

2439. If the lessee fail to load the ship fully, as agreed by the charter-party, or if after loading, he withdraw the goods before the departure of the ship or during the voyage, he is liable to pay the whole freight, and to indemnify the master for all expenses and liabilities arising from such withdrawal.

2440. If the ship be delayed in her departure, or during the voyage, by the fault of the freighter, he is liable for demurrage and other charges.

2441. If the lessee agree to furnish a return cargo, and fail to do so, and the ship of necessity return unladen, the lessee is obliged to pay the whole freight, subject, in the latter case, to the deduction of such amount as the ship may have earned on the return voyage.

SECTION II.

OF FREIGHT, PRIMAGE, AVERAGE AND DEMURRAGE.

2442. Freight is the recompense payable for the lease of a ship, or for carrying goods upon a lawful voyage to the place of their destination. In the absence of express stipulation it is not due until the carriage of the goods is completely performed, except in the cases specified in this section.

2443. The amount of freight is regulated by the agreement in the charter-party, or bill of lading, at a gross sum for the whole ship, or a certain part of it, or at a fixed rate per ton, or package, or otherwise. If not regulated by agreement, the rate is estimated upon the value of the service performed, according to the usage of trade.

2444. The amount of freight is not affected by the longer or shorter duration of the voyage, unless the agreement be to pay a certain sum by the month, or week, or other division of time, in which case the freight begins to run, if not otherwise stipulated, from the commencement of the voyage, and so continues, as well during its course, as during all unavoidable delay not occasioned by the fault of the master or lessor; subject nevertheless to the exception

contained in the next following article.

2445. If the ship be detained by the order of a sovereign power, freight payable by time does not continue to run during such detention. The wages of the seamen and the expense of their maintenance are in such case a subject of general average.

2446. The master may discharge, at the place of loading, goods found in his ship, if they have not been declared, or he may recover freight upon them, at the usual rate paid, at the place of loading, for goods of a like nature.

2447. If the ship be obliged to return with her cargo, by reason of a prohibition of trade occurring, during the voyage, with the country to which she is bound, freight is due upon the outward voyage only, although a return cargo has been stipulated.

2448. If, without any previous fault of the master or lessor, it becomes necessary to repair the ship in the course of the voyage, the freighter is obliged either to suffer the necessary delay or to pay the whole freight. In case the ship cannot be repaired, the master is obliged to engage another; if he be unable to do so, freight is due only in proportion to the part of the voyage which is accomplished.

2449. Freight is due upon the goods which the master has of necessity sold to repair the ship, or to supply it with provisions and other urgent necessaries, and he is obliged to pay for such goods the price which they would have brought at the place of destination.

This rule applies equally although the ship be afterwards lost on the voyage; but in that case the price is that at which the goods were actually sold.

2450. Freight is payable upon the goods cast overboard for the preservation of the ship and of the remainder of the cargo, and the value of such goods is to be paid to the owner of them by contribution on general average.

2451. Freight is not due upon goods lost by shipwreck, taken by pirates, or captured by a public enemy, or which without the fault of the freighter have wholly perished by a fortuitous event, otherwise than as mentioned in the last preceding article. If the freight or any portion of it have been paid in advance, the master is bound to return it, unless there is an agreement to the contrary.

2452. If the goods be recaptured or saved from the shipwreck, freight is due to the place of capture or wreck, and if they be afterwards conveyed by the master to

their place of destination, the whole freight is due, subject to salvage.

2453. The master cannot keep the goods in his ship in default of payment of the freight; but, at the time of unloading, he may prevent them from being carried away, or cause them to be seized. He has a special privilege upon them while they remain in his possession, or the possession of his agent, for the payment of his freight, with primage and accustomed average, as expressed in the bill of lading.

2454. The consignee, or other authorized person who receives the goods, is bound to grant a receipt for them to the master; and the acceptance of goods, under a bill of lading by which delivery is to be made to the consignee or his assigns, he or they paying freight, renders the person so receiving them liable for the freight due upon them, unless the person is the known agent of the shipper.

2455. Goods which are diminished in value or damaged by reason of intrinsic defect in them, or by a fortuitous event, cannot be abandoned for freight.

But if without any fault of the freighter, casks containing wine, oil, honey, molasses, or other like things, have leaked so much that they are nearly or altogether empty, the casks may be abandoned in satisfaction of the freight.

2456. The obligation to pay primage and average, which are mentioned in the bill of lading, is subject to the same rules as the liability for freight; the primage is payable to the master in his own right, unless there is a stipulation to the contrary.

2457. Demurrage is the compensation to be paid by the freighter for the detention of the ship beyond the time agreed upon, or allowed by usage, for loading and discharging.

2458. Any person who receives the goods under a bill of lading importing an obligation to pay demurrage, is liable for such demurrage as may become due on the discharge of the goods; subject to the rules declared in article 2454.

2459. Demurrage under express contract is due for all delays which are not caused by the shipowner or his agents. It does not begin to be computed until the goods are ready to be discharged, after which, if the stipulated time have expired, a further reasonable time must be allowed for their discharge.

2460. If the time, conditions, and rate of demurrage be not agreed upon, they are regulated by the law and usage of the port where the claim arises.

TITLE FOURTH.

OF THE CARRIAGE OF PASSENGERS IN MERCHANT VESSELS.

2461. Contracts for the carriage of passengers in merchant vessels are subject to the provisions contained in the title *Of Affreightment*, in so far as they can be made to apply, and also to the rules contained in the title *Of Lease and Hire*, relating to the carriage of passengers.

2462. The special rules concerning the conveyance of passengers by sea in passenger ships on voyages from the United Kingdom to this province, or on Colonial voyages, or from this province to the United Kingdom in any ship, are contained in the acts of the Imperial parliament, intituled respectively: *The Passengers Act*, 1855, and *The Passengers Act Amendment Act*, 1863, and in the lawful orders and regulations made by competent authority under the same.

2463. Special rules concerning vessels which arrive in the ports of the Province of Quebec from any port in the United Kingdom or of any other part of Europe or from any other port outside Her Majesty's possessions, with passengers or emigrants therefrom, and rules relating to the rights and duties of the masters of such vessels and for the protection of such passengers and emigrants are contained in the Federal acts respecting immigrants and emigrants and respecting quarantine. — R. S. Q., 6270. — R. S. C., cc. 65, 67 and 68.

2464. Passengers while in the vessel are entitled to fitting accommodation and food, according to agreement and to the special laws referred to in the foregoing articles, or, if there be no agreement and such laws do not apply, according to usage and the condition of the parties.

2465. The owner or master has a lien or privilege upon the baggage and other property of the passengers on board the vessel for the amount of the passage money.

2466. The passenger is subject to the authority of the master as declared in the title *Of Merchant Shipping*.

2467. Damages for personal injuries suffered by passengers are subject to the special rules contained in articles 2434, 2435, and 2436.

TITLE FIFTH.

OF INSURANCE.

CHAPTER FIRST.

GENERAL PROVISIONS.

SECTION I.

OF THE NATURE AND FORM OF THE CONTRACT.

2468. Insurance is a contract whereby one party, called the insurer or underwriter, undertakes, for a valuable consideration, to indemnify the other, called the insured, or his representatives, against loss or liability from certain risks or perils to which the object of the insurance may be exposed, or from the happening of a certain event.

2469. The consideration or price which the insured obliges himself to pay for the insurance, is called the premium. It does not belong to the insurer until the risk begins, whether he has received it or not.

2470. Marine insurance is always a commercial contract; other insurances are not by their nature commercial, but they are so when made for a premium by persons carrying on the business of insurers; subject to the exception contained in the next following article.

2471. Mutual insurance is not commercial. It is governed by special statutes, and by the general rules contained in this title, in so far as they are applicable and not inconsistent with such statutes.

2472. All persons capable of contracting may insure objects in which they have an interest and which are subject to risk.

2473. Incorporeal things as well as corporeal, and also human life and health, may be the object of insurance.

2474. A person has an insurable interest in the object insured whenever he may suffer direct and immediate loss by the destruction or injury of it.

2475. The interest insured must exist at the time of the loss unless the policy contains the stipulation of lost or not lost.

The rule is subject to certain exceptions in life insurance.

2476. Insurance may be made against all losses by inevitable accident, or irresist-

ible force, or by events over which the insured has no control; subject to the general rules relating to illegal and immoral contracts.

2477. The insurer may effect a re-insurance, and the insured may insure the solvency of the first insurer.

2478. In case of loss the insured must, with reasonable diligence, give notice thereof to the insurer; and he must conform to such special requirements as may be contained in the policy with respect to notice and preliminary proof of his claim, unless they are waived by the insurer.

If it be impossible for the insured to give notice or to make the preliminary proof within the delay specified in the policy, he is entitled to a reasonable extension of time.

2479. Insurance is divided, with respect to its objects and the nature of the risks, into three principal kinds:

1. Marine insurance;
2. Fire insurance;
3. Life insurance.

2480. The contract of insurance is usually witnessed by an instrument called a policy of insurance.

The policy either declares the value of the thing insured and is then called a valued policy, or it contains no declaration of value, and is then called an open policy.

Wager or gaming policies, in the object of which the insured has no insurable interest, are illegal.

2481. The acceptance of an application for insurance constitutes a valid agreement to insure, unless the insurer is required by law to contract in another form exclusively.

2482. Policies of insurance may be transferred by indorsement and delivery, or by delivery alone, subject to the conditions contained in them.

But marine policies and fire policies can be transferred only to persons having an insurable interest in the object of the policy.

2483. In the absence of any consent or privity on the part of the insurer, the simple transfer of the thing insured does not transfer the policy.

The insurance is thereby terminated, subject to the provisions contained in article 2576.

2484. The announcements and clauses which are essential or usual in policies of insurance, are declared in articles hereinafter contained relating respectively to the different kinds of insurance.

SECTION II.

OF REPRESENTATION AND CONCEALMENT.

2485. The insured is obliged to represent to the insurer fully and fairly every

fact which shows the nature and extent of the risk, and which may prevent the undertaking of it, or affect the rate of premium.

2486. The insured is not obliged to represent facts known to the insurer, or which from their public character and notoriety he is presumed to know; nor is he obliged to declare facts covered by warranty express or implied, except in answers to inquiries made by the insurer.

2487. Misrepresentation or concealment either by error or design, of a fact of a nature to diminish the appreciation of the risk or change the object of it, is a cause of nullity. The contract may in such case be annulled although the loss has not in any degree arisen from the fact misrepresented or concealed.

2488. Fraudulent misrepresentation or concealment on the part either of the insurer or of the insured is in all cases a cause of nullity of the contract in favor of the innocent party.

2489. The obligation of the insured with respect to representation is satisfied when the fact is substantially as represented and there is no material concealment.

SECTION III.

OF WARRANTIES.

2490. Warranties and conditions are a part of the contract and must be true if affirmative, and if promissory must be complied with; otherwise the contract may be annulled notwithstanding the good faith of the insured.

They are either expressed or implied.

2491. An express warranty is a stipulation or condition expressed in the policy, or so referred to in it as to make part of the policy.

Implied warranties will be designated in the following chapters relating to different kinds of insurance.

CHAPTER SECOND.

OF MARINE INSURANCE.

SECTION I.

GENERAL PROVISIONS.

2492. The policy of marine insurance contains:

The name of the insured or of his agent;

A description of the object insured, of the voyage, of the commencement and termination of the risk, and of the perils insured against;

The name of the ship and master, except when the insurance is on a ship or ships generally;

The premium;

The amount insured;

The subscription of the insurer with its date.

It also contains such other clauses and announcements

as the parties may agree upon.

2493. Insurance may be made on ships, on goods, on freight, on bottomry and respondentia loans, on profits and commissions, on premiums of insurance, and all other things appreciable in money and exposed to the risks of navigation, with the exception of seamen's wages, upon which insurance cannot be legally made, and subject to the general rules relating to unlawful and immoral contracts.

2494. Insurance may be made for any kind of voyage or transport by sea, river or canal navigation and either for the whole voyage or for a limited time.

2495. The risk of loss or damage of the thing insured by perils of the sea is essential to the contract of marine insurance.

The risks usually specified in the policy are tempest and ship-wreck, stranding, collision, unavoidable change of the ship's course, or of her voyage, or of the ship itself, fire, jettison, plunder, piracy, capture, reprisal and other casualties of war, detention by order of a sovereign power, barratry of the master and mariners, and generally all other perils and chances of navigation by which loss or damage may arise.

The parties may limit or extend the risks by special agreement.

2496. If the time of the commencement and termination of the risk be not specified in the policy, it is regulated according to article 2598.

2497. Marine policies in cases of doubtful meaning are construed by the established and known usage of the trade to which the policy relates; such usage is held to be a part of the policy when it is not otherwise expressly provided.

2498. An insurance made after the loss or the arrival of the object of it, is null, if, at the time of insuring, the insured had a knowledge of the loss, or the insurer of the arrival.

Such knowledge is presumed where information might have been received in the usual course and at the usual rate of transmission.

SECTION II.

OF THE OBLIGATIONS OF THE INSURED.

2499. The principal obligations of the insured relate:

To the premium;

To representation, and concealment;

To warranties and conditions;

To abandonment, which is treated in the fifth section.

§ 1. OF THE PREMIUM.

2500. The insured is obliged to pay the amount or rate of premium agreed upon, according to the terms of the contract.

If the time of payment be not specified, it is payable without delay.

2501. In the following cases the premium is not due, and if it have been paid it may be recovered back, the contract being void:

1. When the risk insured against does not occur, either by reason of the entire breaking up of the voyage before the departure of the ship, or for other causes, even those arising without fraud from the act of the insured;

2. When there is a want of insurable interest, or any other cause of nullity, without fraud on the part of the insured.

The insurer in these cases is entitled to one half per cent. on the sum insured, for his indemnification, unless the policy is illegal, or rendered null by fraud, misrepresentation or concealment on his part.

If the policy be illegal, there is no right of action for the premium, and none to recover it back if it have been paid.

2502. The preceding article applies when the risk occurs for part only of the value insured, for the non-payment or return of a proportional part of the premium, according to circumstances and the discretion of the court.

§ 2. OF REPRESENTATION AND CONCEALMENT.

2503. The rules concerning representation, and the effect of misrepresentation or concealment are declared in chapter one, section two.

§ 3. OF WARRANTIES.

2504. The genral rules relating to warranties are contained in chapter one, section three.

2505. It is an implied warranty in every contract of marine insurance that the ship shall be seaworthy at the time of sailing. She is seaworthy when she is in a fit state, as to repairs, equipments, crew, and in all other respects, to undertake the voyage.

2506. In insurance for a ship-owner it is an implied warranty that the ship shall be properly documented and conducted according to the laws and treaties of the country to which she belongs, and to the law of nations.

SECTION III.

OF THE OBLIGATIONS OF THE INSURER.

2507. The principal obligation of the insurer is to pay

to the insured all losses suffered by him by reason of any of the risks insured against, according to the terms of the contract.

His liability is subject to the rules contained in the foregoing section and to the rules and conditions hereinafter declared.

2508. The insurer is not liable for losses suffered after a deviation or change of the risk made without his consent, by changing, contrary to the established usage, the ship's course or the voyage, or the ship itself, by the order of the insured, unless the deviation or change is of necessity, or for the purpose of saving human life.

The insurer is nevertheless entitled to the premium if the risk has commenced.

2509. The insurer is not liable for loss or damage arising from intrinsic defect in the thing, or caused by the culpable act or gross negligence of the insured.

2510. The insurer is not liable for loss by barratry of the master or mariners unless there is an agreement to the contrary.

2511. Barratry is any act of wilful misconduct by the master or mariners whereby loss is caused to the owners or freighters.

2512. The insurer is not liable for the ordinary charges known as petty averages, such as pilotage, towage, tonnage, anchorage, clearance, or duties imposed upon the ship or cargo.

2513. The limitation of the insurer's liability, for particular average under a certain amount and for the loss or damage of certain articles enumerated in the common memorandum of warranty to be free from average, is regulated by the terms of such memorandum contained in the policy. If there be no memorandum of warranty, the general rules declared in this title apply.

2514. A contract of insurance made fraudulently on the part of the insured for a sum exceeding the value of the object of it, may be annulled by the insurer who in such case is entitled to one half per cent. upon the amount insured.

2515. If in the case specified in the last preceding article there be no fraud, the contract is valid to the amount of the value of the object insured.

The insurer is not entitleed to the full premium upon the amount insured in excess of the value, but to one half per cent. only.

2516. If there be several contracts of insurance effected without fraud upon the same object, and against the same risks and the first contract insures the full value of the object, it alone can be enforced.

The subsequent insurers are free from liability and are bound to return the premium, reserving a half per cent.

Subject nevertheless to such special agreements and conditions as may be contained in the policies of insurance.

2517. When in the case specified in the last preceding article the total value of the object is not insured by the first contract, the subsequent insurers are liable for the surplus according to the date of their respective contracts; subject to the same restriction.

2518. If the subsequent insurance be fraudulent on the part of the insured, he is obliged to pay the whole premium on such insurance but is not entitled to recover anything upon it.

2519. When there is a partial loss of an object insured by several insurances to an amount not exceeding its full value, the insurers are liable for it rateably in proportion to the sums for which they have respectively insured.

2520. When the insurance is made separately upon goods to be laden in different ships, if all the goods be placed in one of the ships or in any number of them less than the whole, the insurer is liable only for the sums insured on the goods which under the contract were to be placed in such ship or ships, although all the ships specified in the contract be lost. He is entitled nevertheless to one half per cent. of premium upon the remainder of the total amount insured.

SECTION IV.

OF LOSSES.

2521. Loss for which the insurer is liable is either total or partial.

2522. Total loss may be either absolute or constructive.

It is absolute when the thing insured is wholly destroyed or lost.

It is constructive when, by reason of any event insured against, the thing though not wholly destroyed or lost becomes of little or no value to the insured, or the voyage and adventure are lost or rendered not worth pursuing.

Before the insured can claim for a constructive total loss he must make an abandonment as declared in the following section.

2523. All losses not included within the meaning of the last preceding article are partial losses.

2524. When a loss by collision occurs by a fortuitous event without either party being in fault, it falls upon the injured ship without recourse against the other, and is a loss by the perils of the

sea for which the insurer is liable under the general terms of the policy.

2525. When the collision is caused by the fault of the master or mariners of one of the ships, the party in fault is liable to the other, and if the insured ship be the one injured by the fault of the master or mariners of the other, the insurer is liable under the general clause, but if the injury be caused by the fault of the master or mariners of the insured ship, the insurer is not liable. If the fault amounts to barratry, it is subject, in so far as the insurer is concerned, to the provision contained in article 2510.

2526. If the cause of the collision be unknown or it be impossible to determine by whose fault it was caused, the damages are borne in equal portions by both ships; the insurer is liable in such case under the general clause.

2527. Extraordinary expenses necessarily incurred for the sole benefit of some particular interest, as for the ship alone or for the cargo alone, and damages sustained by the ship alone or the cargo alone, and not voluntarily suffered for the common safety, are particular average losses for which the insurer is liable to the insured under the general terms of the policy, when these losses are caused by perils of the sea.

2528. Loss by salvage is a loss by the perils of the sea for which the insurer is liable under the general terms of the policy.

Special rules relating to salvage are contained in the Merchant Shipping Act, 1854.

2529. The rules concerning loss by average contribution are contained in the sixth section of this chapter.

2530. When in the course of the voyage the ship becomes disabled from completing it, the master is bound to procure another vessel for conveying the cargo to the place of destination, if it can be done with advantage to the parties interested; and in such case the liability of the insurer continues after the cargo is transhipped for that purpose.

2531. The insurer is also liable in the case provided in the last preceding article for damages, expenses of discharging, storage, reshipment, supplies, freight and all other costs not exceeding the amount insured.

2532. If in the case provided in article 2530, the master be unable to procure another vessel within a reasonable time for conveying the cargo to its destination, the insured may make an abandonment of it.

2533. In insurance by an open policy the value of the ship is held to be that which she bears at the port where the voyage begins, including

whatever adds to her permanent value or is necessary to prepare her for the voyage, and also the costs of insurance.

2534. The value of the goods insured by open policy is established by the invoice, or if that cannot be done is estimated according to their market price at the time of landing; all charges and expenses incurred up to that time, together with the premium of insurance, are included.

2535. The amount for which the insurer is liable on a partial loss is ascertained by comparing the gross produce of the damaged sales with the gross produce of the sound sales, and applying the percentage of difference to the value of the goods as specified in the policy, or established in the manner provided by the last preceding article.

2536. The insured is bound when he makes claim for any loss, to declare, if thereunto required, all other insurances effected by him on the thing insured and also the loans taken by him on bottomry and respondentia.

He cannot claim payment for the loss until such declaration is made, when so required, and if the declaration be false and fraudulent he loses his right to recover.

2537. The insured is bound to do in good faith all in his power between the time of loss and the abandonment to save the effects insured. His acts and those of his agents done for that purpose are for the benefit of the insurer and at his expense and risk.

SECTION V.

OF ABANDONMENT.

2538. The insured may make an abandonment to the insurer of the thing insured in all cases of its constructive loss and may thereupon recover as for a total loss. Without abandonment he is entitled in such cases to recover as for a partial loss only.

2539. An abandonment cannot be partial or conditional. It extends however only to the property actually at risk at the time of the loss.

2540. If different things or classes of things be insured by the same policy and separately valued, the right to abandon may exist in respect to a part separately valued, as well as in respect to all.

2541. The abandonment must be made within a reasonable time after the insured has received intelligence of the loss.

If from the uncertainty of the intelligence or the nature of the loss further inquiry and investigation be required to enable the insured to determine whether he will

abandon or not, reasonable delay for that purpose is allowed according to circumstances.

2542. If the insured fail to abandon within a reasonable time, as provided in the last preceding article, he is held to have waived the right to do so and can only recover as for a partial loss.

2543. The abandonment is made by a notice given by the insured to the insurer of the loss, and that he abandons to the latter all his interest in the thing insured.

2544. The notice of abandonment must be explicit and must contain a statement of the grounds of abandonment. These grounds must exist and be sufficient at the time of the notice.

2545. Abandonment on the ground of the ship being disabled by stranding cannot be made if she can be raised and put in a condition to continue her voyage to the place of destination.

In such case the insured has his recourse against the insurer for the expense and loss occasioned by the stranding.

2546. If a ship has not been heard of within a reasonable time after sailing, or after the reception of the last intelligence of her, she is presumed to have foundered at sea, and the insured may make an abandonment and recover for a constructive total loss.

The time necessary for raising such presumption is determined by the court according to the circumstances of the case.

2547. Abandonment made and accepted is equivalent to transfer, and the thing abandoned with the rights pertaining to it becomes from the time of abandonment the property of the insurer.

The acceptance may be either express or implied.

2548. [On an accepted abandonment of the ship, the freight earned after the loss belongs to the insurer of the ship; that earned previously to the loss belongs to the ship-owner or to the insurer on freight to whom it is abandoned.]

2549. Abandonment made upon sufficient ground and accepted, is binding on both parties. It cannot be defeated by any subsequent event, or revoked otherwise than by mutual consent.

2550. If the insurer refuse to accept a valid abandonment he is liable as for an absolute total loss, deducting from the amount any proceeds of the thing abandoned which have been applied to the benefit of the insured.

SECTION VI.

OF LOSS BY AVERAGE CONTRIBUTIONS.

2551. In the absence of special agreement between the parties, average con-

tributions are regulated by the following articles of this section, and, when these do not apply, by the usage of trade.

The insurer is bound to reimburse the insured the amount of his contribution not exceeding the sum insured.

2552. Contribution by the ship and freight and by the goods whether saved or lost, rateably and according to their respective values, is made for damages voluntarily sustained and extraordinary expenses incurred, for the common safety of the ship and cargo.

These are called general or gross average losses, and are given as a compensation to as follows:

1. Money or other things pirates to ransom the ship and cargo, or as salvage to recaptors;

2. Loss by jettison;

3. Masts, cables, anchors or other furniture of the ship, cut away, destroyed or abandoned;

4. Damages caused by jettison to the goods which remain in the ship or to the ship itself;

5. The wages and maintenance of seamen, during the detention of the ship in the course of her voyage, by a sovereign power, and during the necessary repairs of injuries of a nature to give rise to average contribution;

6. The expense of unlading, to lighten the ship and enable her to enter a port of refuge or river, when she is compelled to do so by storm or by the pursuit of an enemy;

7. Loss and expenses arising from the voluntary stranding of the ship for the purpose of escaping total loss or capture.

And in general all damages voluntarily suffered and extraordinary expenses incurred for the common safety of the ship and cargo, from the time of loading and departure of the ship to the time of her arrival and discharge at the port of destination.

2553. Jettison gives rise to contribution only when it is made in imminent peril and is necessary for the preservation of the ship and cargo.

It may be of the cargo, or of the provisions, tackle or furniture of the ship.

2554. Jettison must be first made of things the least necessary, the most weighty, and of the least value.

2555. The ship's warlike stores and provisions, and the clothes of the crew, do not contribute, but the value of those lost by jettison is paid by contribution upon other effects generally.

The baggage of passengers does not contribute. If lost it is paid by contribution in which it shares.

2556. Goods for which

there is no bill of lading or acknowledgment by the master, or which are put on board contrary to the charter-party, are not paid for by contribution if lost by jettison. They contribute if saved.

2557. Goods carried on deck, which are lost or damaged by jettison, are not paid for by contribution, unless they were so carried in conformity with an established usage and course of trade. They contribute if saved.

2558. In cases of average contribution the ship and freight are estimated at their value at the port of discharge.

The goods lost as well as those saved are estimated in like manner, deducting freight, duties and other charges.

2559. Notwithstanding the rule of valuation contained in the last preceding article, the amount which the insurer is liable to reimburse to the insured for his contribution is regulated by the value which the ship or goods bear according to articles 2533 and 2534, or by the sum specified in the valued policy and not by their contribution value.

2560. No contribution is made for particular average losses. They are borne by the owner of the thing which has suffered the damage or occasioned the expense; saving his recourse against the insurer as declared in article 2527.

2561. If the ship be not saved by the jettison, no contribution takes place, and the goods saved are not held to contribute for those lost or damaged thereby.

2562. If the ship be saved by the jettison and continue her voyage, but be afterwards lost, the goods saved are subject to contribution at their actual value, deducting the costs of salvage.

2563. The goods jettisoned do not in any case contribute to the payment of losses happening afterwards to the goods saved.

The cargo does not contribute to the payment of the ship when lost or rendered unfit for navigation.

2564. In case of the loss of goods put into lighters to enable the ship to enter into a port or river, the ship and her whole cargo are subject to contribution; but if the ship be lost with the goods remaining on board, the goods in the lighters are not subject to contribution, although they arrive safely in port.

2565. It is the duty of the master on his arrival at the first port to make his declaration and protests in the customary form, and also together with some of his crew to make oath that the loss or expense sustained was for the safety of the ship

and crew. The neglect to do so does not however affect the rights of the parties interested.

2566. The owners and master have a privilege and right of retention upon the goods on board the ship or their price for the amount of contribution for which these are liable.

2567. If after the contribution the goods jettisoned be recovered by the owner, he is bound to repay to the master and other interested parties, the amount of the contribution received by him, deducting therefrom the amount of damage suffered by the goods and the costs of salvage.

CHAPTER THIRD.

OF FIRE INSURANCE.

2568. Insurance against loss by fire is regulated by the provisions contained in the first chapter of this title, and is subject also to the rules contained in the second chapter, when these can be made to apply and are not inconsistent with the articles contained in this chapter.

2569. A fire policy contains the name of the party in whose favor it is made;

A description or sufficient designation of the object of the insurance and of the nature of the interest of the insured;

A declaration of the amount covered by the insurance, of the amount or rate of the premium, and of the nature, commencement and duration of the risk;

The subscription of the insurer with its date;

Such other announcements and conditions as the parties may lawfully agree upon.

2570. Representations not contained in the policy or made a part of it, are not admitted to control its construction or effect.

2571. The interest of an insurer against loss by fire may be that of an owner, or of a creditor, or any other interest appreciable in money in the thing insured; but the nature of the interest must be specified.

2572. It is an implied warranty on the part of the insured that his description of the object of the insurance, shall be such as to shew truly under what class of risks it falls according to the proposals and conditions of the policy.

2573. An insurance upon effects indeterminately as being in a certain place is not limited to the particular effects which are there at the time of insuring, but attaches to all those falling within the description contained in the policy which are in the place at the time of the loss; unless a different intention is indicated in the policy.

2574. Any alteration in the

use or condition of the thing insured from those to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured and which increases the risk, is a cause of nullity of the policy.

If the alteration do not increase the risk, the policy is not affected by it.

2575. The sum insured does not constitute any proof of the value of the object of the insurance; such value must be established in the manner required by the conditions of the policy and the general rules of proof, unless there is a special valuation in the policy.

2576. The insurance is rendered void by the transfer of interest in the object of it from the insured to a third person, unless such transfer is with the consent or privity of the insurer.

The foregoing rule does not apply in the case of rights acquired by succession or in that specified in the next following article.

The insured has in all cases a right to assign the policy with the thing insured, subject to the conditions therein contained. — R. S. Q., 6271; 43 V. C., c. 1.

2577. A transfer of interest by one to another of several partners or owners of undivided property who are jointly insured, does not avoid the policy.

2578. The insurer is liable for losses caused by the insured otherwise than by fraud or gross negligence.

2579. The insurer is also liable for losses caused by the fault of the servants of the insured committed without his knowledge or consent.

2580. The insurer is liable for all losses which are the immediate consequence of fire or burning from whatever cause it may arise, including damage to the things insured suffered in their removal or by the means used for extinguishing the fire; subject to the special exceptions contained in the policy.

2581. The insurer is not liable for losses caused merely by excessive heat in a furnace, stove or other usual means of communicating warmth when there is no actual burning or ignition of the thing insurred.

2582. In case of loss by fire the insurer is liable for the whole amount of the loss not exceeding the sum insured, without deduction or average.

2583. When by the terms of the policy a delay is given for the payment of the renewed premium, the insurance continues, and if a loss occur within the delay, the insurer is liable, deducting the amount of the premium due.

2584. The insurer on paying the loss is entitled to a transfer of the rights of the

insured against the persons by whose fault the fire or loss was caused.

CHAPTER FOURTH.

OF LIFE INSURANCE.

2585. Life insurance is regulated by the provisions contained in the first chapter of this title, and is subject also to the rules contained in the second chapter when these can be made to apply and are not inconsistent with the articles contained in this chapter.

Articles 2570 and 2583 apply to contracts of life insurance.

2586. Life insurance is subject also to the rules contained in articles 1902, 1903, 1904, 1905, 1906, relating to the persons upon whose life it may be effected.

2587. A life policy contains:

The name or sufficient designation of the party in whose favor it is made, and of the person whose life is insured;

A declaration of the amount of the insurance, of the amount or rate of premium, and of the commencement and duration of the risk;

The subscription of the insurer with its date;

Such other announcements or conditions as the parties may lawfully agree upon.

2588. The declaration in the policy of the age and condition of health of the person, upon whose life the insurance is made, constitutes the warranty upon the correctness of which the contract depends.

Nevertheless in the absence of fraud the warranty that the person is in good health is to be construed liberally and not as meaning that he is free from all infirmity or disorder.

2589. In life insurance the sum insured may be made payable upon the death of the person upon whose life it is effected, or upon his surviving a specified period, or periodically so long as he shall live, or otherwise contingent upon the continuance or determination of life.

2590. The insured must have an insurable interest in the life upon which the insurance is effected.

He has an insurable interest in the life:

1. Of himself;

2. Of any person upon whom he depends wholly or in part for support or education;

3. Of any person under legal obligation to him for the payment of money, or respecting property or services which death or illness might defeat or prevent the performance of;

4. Of any person upon whose life any estate or interest vested in the insured depends.

2591. A policy of insurance on life or health may pass by transfer, will, or succession, to any person, whether he has an insurable interest or not in the life of the person insured.

2592. The measure of the interest insured is the sum fixed in the policy, except in cases of insurance by creditors or in other like cases in which the interest is susceptible of exact pecuniary measurement. In these cases the sum fixed is reduced to the actual interest.

2593. Insurance effected by a person on his own life is void if he die by the hands of justice, by duelling, or by suicide.

TITLE SIXTH.

OF BOTTOMRY AND RESPONDENTIA.

2594. Bottomry is a contract whereby the owner of a ship or his agent, in consideration of a sum of money loaned for the use of the ship, undertakes conditionally to repay the same with interest, and hypothecates the ship for the performance of his contract. The essential condition of the loan is that if the ship be lost by a fortuitous event or irresistible force, the lender shall lose his money; otherwise it is to be repaid with a certain profit for interest and risk.

2595. If the loan be made not upon the ship but upon the goods laden in her, the contract is called respondentia.

2596. The loan may be made upon the ship, freight and cargo together, or upon such portion of either as may be agreed upon by the parties.

2597. The contract must specify:

1. The amount of money loaned with the rate of interest to be paid;

2. The objects upon which the loan is made. It specifies also the nature of the risk.

5298. If the time of the risk do not appear from the contract, it runs, with respect to the ship and freight, from the day she sails until she is anchored or moored in the place of her destination.

With respect to the cargo, it runs from the time the goods are shipped until their delivery ashore.

2599. In loans upon bottomry the ship, with her tackle, furniture, armament

and provisions, and freight earned, are held by privilege for the payment of the capital and interest of the money loaned upon them.

In loans upon respondentia the cargo is held in like manner.

If the loan be upon a part only of the ship or cargo such part only is held for the payment.

2600. Loans in the nature of contracts of bottomry or respondentia cannot be made upon the wages of sailors.

2601. A loan made for a sum exceeding the value of objects affected for the payment of it may be annulled at the instance of the lender, if fraud be proved against the borrower.

If there be no fraud, the contract is valid to the amount of the objects affected for the payment, and the surplus of the sum borrowed must be repaid with legal interest at the place of borrowing.

2602. The borrower upon respondentia is not discharged from his liability by the loss of the ship and cargo; unless he proves that he had goods aboard, at the time of the loss, of the value of the amount loaned to him.

2603. A loan upon bottomry or respondentia may be made to the master, in case of urgent necessity, for the repair and other uses of the ship; but, if made to him without the authority of the owners in the place where they reside, or where communication with them is easy, such part only of the ship or cargo as may belong to the master is held for the payment of the loan; subject to the provisions contained in the next following article.

2604. The parts of the owners, even if residing in the place where the loan is made, are held for the payment of money loaned to the master for repairs and provisions, when the ship has been affreighted with the consent of such owners, and they have refused to furnish their contingent for putting her in condition for the voyage.

2605. Loans upon bottomry and respondentia, made for the latest voyage, are paid by preference before those of a preceding one, even when it is declared that the latter are continued by a formal renewal.

The loans made during the voyage are paid by preference over those contracted before the departure of the ship; and if several loans be contracted during the voyage the last is preferred to any which precede it.

2606. The lender upon respondentia does not bear the loss of goods which perish by perils of the sea, when such goods have been transferred from the ship specified in the contract into a different one; unless it is proved that such

transfer was caused by irresistible force.

2607. If the ship or cargo upon which a loan is made be totally lost, by a fortuitous event or irresistible force, within the time and place for which the risk extends, the money loaned cannot be recovered.

2608. Losses arising from defect in the thing, or caused by the act of the owners, master, or charterer, are not considered fortuitous events, unless there is a special agreement to the contrary.

2609. In case of partial loss by shipwreck or other fortuitous event, the payment of the sum loaned is reduced to the value of the things held for it which are saved.

2610. Lenders upon bottomry or respondentia contribute to general average in discharge of the borrower.

They do not contribute to simple average or particular damages, unless there is an arrangement to that effect.

6211. If there be a loan and also an insurance upon the same ship or cargo, the lender is preferred to the insurer upon whatever is saved from the shipwreck, for the capital only of his loan.

2612. Bottomry and respondentia bonds made payable to order may be negotiated by endorsement. Such negotiation of them has the same effect and produces the same rights as the transfer of other negotiable instruments.

FINAL PROVISIONS.

2613. The laws in force at the time of the coming into force of this code are abrogated in all cases:

In which there is a provision herein having expressly or impliedly that effect;

In which such laws are contrary to or inconsistent with any provision herein contained;

In which express provision is herein made upon the particular matter to which such laws relate;

Except always that as regards transactions, matters and things anterior to the coming into force of this code, and to which its provisions could not apply without having a retroactive effect, the provisions of law which without this code would apply to such transactions, matters and things remain in force and apply to them, and this code applies to them only so far as it coincides with such provisions.

2614. The declaration that certain matters are regulated by the Code of Civil Pro-

cedure shall not have the effect of repealing any existing rule or of abolishing any mode of proceeding now in use until the said Code of Civil Procedure shall have become law.

2615. If in any article of this code founded on the laws existing at the time of its promulgation, there be a difference between the English and French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded; and if there be any such difference in an article changing the existing laws, that version shall prevail which is most consistent with the intention of the article, and the ordinary rules of legal interpretation shall apply in determining such intention.

THE END.

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Art. 761.	See 6 E. VII., c. 38, s. 6. Persons civilly degraded.
Art. 831.	Imp. Statute, 14 G. III., c. 83, s. 10. L. C., 41 G. III., c. 4.
Art. 844.	Should read: Authentic wills must be made as originals remaining with the notary.

Art. 844. The witnesses must be named and described in the will. They must be of the male sex, of full age, and must not be sentenced to civil degradation, nor to an infamous punishment. (Aliens may serve as witnesses.) The clerks and servants of the notaries cannot.

The date and place of its execution must be stated in the will.—6 Ed. VII., c. 38.

Art. 249. See R. S. Q., 1909, s.s. 7257, Official tutors.

Art. 336a. See R. S. Q., 1909 s.s. 7256, Penalty for selling liquor to interdicted persons.

Art. 1054. See R. S. Q., 1909, s.s. 7321 et seq. Employer's Liability Act.

Art. 1056. Imp. Act, 9 & 10 V., c. 93. (Lord Campbell's Act).

S. of C., 10 & 11 V., c. 6; R. S. of C., 22 V., c. 78.

Art. 1163. See R. S. C., 1906, c. 25. Legal Tender.

See R. S. C., 1906, c. 27. Legal Tender.

Art. 1168. See R. S. Q., 1909, s.s. 839 & 1480. Treasurer office, general deposit office.

Art. 1265. See R. S. Q., 1909, s.s. 7377. Provincial Insurance in favor of wife or children.

Art. 1570. See R. S. Q., 1909, s.s. 7411 et seq. Sale of constituted rents.

Art. 1666. See R. S. Q., 1909, s.s. 7415. Masters, servants, lumbermen, fishermen.

Art. 1671. See R. S. C., 1906, c. 113. Merchant Shipping Act.

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See R. S. Q., 1909, s.s. 7437. Partnership declarations.

Art. 1891. See R. S. C., 1906, c. 79. Federal Companies' Act.

See R. S. Q., 1909, s.s. 5957 et seq. Provincial Joint Stock Companies.

Art. 1962. See R. S. Q., 1909, s.s. 7446. Companies giving security.

Art. 1979. See R. S. C., 1906, c. 29. Banks & Banking.
See R. S. Q., 1909, s.s. 7457. Wharfingers, etc.
See R. S. Q., 1909, s.s. 1198. Concerning pawning and pawnbrokers.

Art. 1994a. See R. S. Q., 1909, s.s. 74344.

Art. 2009a. See R. S. Q., 1909, s.s. 6435. Privilege of stoning companies.

Art. 2013. Should read:

The laborer, workman, architect, builder, and the supplier of materials have a right of preference over the vendor and other creditors, on the immoveable, but only upon the additional value given to the immoveable by the work done.

In case the proceeds are insufficient to pay the laborer, workman, architect, builder and supplier of materials, or in cases of contestation, the additional value given by the work is established by a relative valuation effected in the manner prescribed in the Code of Civil Procedure.

The aforesaid privileged claim is paid only upon the amount established as being the additional value given to the immoveable by the work done.—59 V., c. 42, s. 2; 4 Ed. VII., c. 43

Art. 2013a. Should read:

For the purposes of the privilege, the laborer, the workman, architect, builder and supplier of materials rank as follows:

1. The laborer;
2. The workman;
3. The architect;
4. The builder;
5. The supplier of materials.—59 V., c. 42, s. 2; 4 Ed. VII., c. 43, s. 2.

Art. 2158. See R. S. Q., 1909, s.s. 7465. Organization of Registry offices.

Art. 2260. See R. S. Q., 1909, s.s. 7532. Prescription of penal actions.

Art. 2468. See R. S. C., 1906, c. 34. Federal Insurance Act.